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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, November 19, 2013
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
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Washington, DC 20002

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Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 9056 of November 8, 2013

World Freedom Day, 2013

By the President of the United States of America

A Proclamation

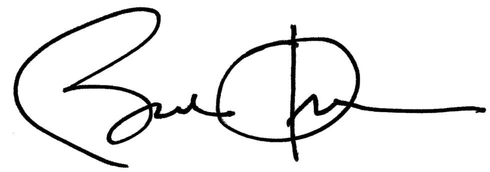
On November 9, 1989, Germans from East and West united to bring down the Berlin Wall, marking the arrival of a new age. A symbol of oppression crumbled under the force of popular will. A people transitioned from the pain of division to the joy of reunification. And all over Europe, corrupt dictatorships gave way to new democracies. On World Freedom Day, we remember that for all the raw power of authoritarian regimes, it is ultimately citizens who decide whether to be defined by a wall or whether to tear it down.

Twenty-four years ago, the United States stood alongside people who demanded their basic liberties and nations that reclaimed the right to set their own course. The democracies that emerged are now some of America's strongest allies, united around the ideals of freedom and equality. These alliances are the foundation of our global security and the engine of our global economy.

As we commemorate the fall of the Berlin Wall, we recognize that the fight for human dignity goes on. Decades after the fall of the Iron Curtain, the United States continues to march with those who are reaching for freedom around the world. Today, let us remember that our fates and fortunes are linked as never before; when one nation takes a step toward liberty, all of us are a little more free. Let us offer our support to all those still struggling to throw off the weight of oppression and embrace a brighter day.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 9, 2013, as World Freedom Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities, reaffirming our dedication to freedom and democracy.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of November, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.



[FR Doc. 2013–27377
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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2008–0085]

RIN 0579–AD17

Importation of Ovine Meat From Uruguay

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of certain animals, meat, and other animal products to allow, under certain conditions, the importation of fresh (chilled or frozen) ovine meat from Uruguay. A risk assessment that we have prepared indicates that fresh (chilled or frozen) ovine meat can safely be imported from Uruguay under these conditions. This action will allow the importation of fresh ovine meat from Uruguay into the United States while continuing to protect the United States against the introduction of foot-and-mouth disease.

DATES: *Effective Date:* November 29, 2013.

FOR FURTHER INFORMATION CONTACT: Dr. Silvia Kreindel, Senior Staff Veterinarian, Regionalization Evaluation Services Staff, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 851–3313.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Health Protection Act (AHPA, 7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture may prohibit or restrict the importation of any animal or article if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock.

Pursuant to this Act, the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including rinderpest and foot-and-mouth disease (FMD). These are dangerous and destructive communicable diseases of ruminants and swine.

Section 94.1 of the regulations contains criteria for APHIS recognition of foreign regions as free of rinderpest and FMD. Section 94.11 restricts the importation of ruminants and swine and their meat and certain other products from regions that are declared free of rinderpest and FMD but that nonetheless present a disease risk because of the regions' proximity to or trading relationships with regions affected with rinderpest or FMD. Regions APHIS has declared free of FMD and/or rinderpest, and regions declared free of FMD and rinderpest that are subject to the restrictions in § 94.11, are listed on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.*

Because vaccination for FMD may not provide complete protection to livestock, and because it can be difficult to quickly detect FMD in animals vaccinated for FMD, APHIS does not recognize regions that vaccinate animals for FMD as free of the disease. Uruguay vaccinates cattle for FMD. Therefore, although Uruguay has not had a case of FMD since 2001, APHIS does not recognize Uruguay as a region free of FMD. Based on a final rule effective and published in the **Federal Register** on May 29, 2003 (68 FR 31940–31949, Docket No. 02–109–3), however, APHIS allows the importation of fresh (chilled or frozen) beef from Uruguay under certain conditions that mitigate the FMD risks associated with this product. The conditions are set out in § 94.22 of the regulations.

In a proposed rule[1] published in the **Federal Register** on February 24, 2011 (76 FR 10266–10269, Docket No. APHIS–2008–0085), we proposed to also allow the importation of fresh ovine (sheep) meat from Uruguay under conditions identical to those currently required for the importation of fresh beef, except for one change noted below. The proposed conditions were as follows:

- The meat is from animals that have been born, raised, and slaughtered in Uruguay.
- If FMD is detected anywhere in Uruguay, the export of beef and ovine meat from all of Uruguay to the United States is prohibited until at least 12 months have elapsed since the depopulation, cleaning, and disinfection of the last infected premises. [The current requirement for fresh beef is that FMD has not been diagnosed in Uruguay within the previous 12 months.]
- The meat came from animals that originated from premises where FMD has not been present during the lifetime of any animals slaughtered for the export of meat to the United States.
- The meat came from animals that were moved directly from the premises of origin to the slaughtering establishment without any contact with other animals.
- The meat came from animals that received ante-mortem and post-mortem veterinary inspections, paying particular attention to the head and feet, at the slaughtering establishment, with no evidence found of vesicular disease.
- The meat consists only of parts of the animal's carcass that are, by standard practice, placed in a chiller for maturation after slaughter. No part of the animal's heads, feet, hooves, or internal organs may be exported (and for bovines, the hump is also excluded).
- All bone and visually identifiable blood clots and lymphoid tissue have been removed from the meat.
- The meat has not been in contact with meat from regions other than those APHIS recognizes as free of FMD.
- The meat came from carcasses that were allowed to maturate at 40 to 50 °F (4 to 10 °C) for a minimum of 36 hours after slaughter and that reached a pH of 5.8 or less in the loin muscle at the end

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0085.*

of the maturation period. Measurements for pH must be taken at the middle of both *longissimus dorsi* muscles. Any carcass in which the pH does not reach 5.8 or less may be allowed to maturate an additional 24 hours and be retested, and, if the carcass still has not reached a pH of 5.8 or less after 60 hours, the meat from the carcass may not be exported to the United States.

- An authorized veterinary official of the Government of Uruguay certifies on the foreign meat inspection certificate that the above conditions have been met.
- The establishment in which the animals are slaughtered allows periodic on-site evaluation and subsequent inspection of its facilities, records, and operations by an APHIS representative.

We solicited comments concerning the proposed rule for 60 days ending April 25, 2011. We received 10 comments by that date. They were from organizations representing Uruguayan meat packers, meat exporters, and sheep producers; Uruguay's Ministry of Livestock, Agriculture, and Fisheries (MGAP); organizations representing meat importers within the United States and the U.S. sheep industry; and several private citizens.

Four of the commenters supported the rule as written. Two commenters objected to the proposal. The remaining commenters favored the importation of fresh (chilled or frozen) ovine meat from Uruguay but requested clarifications or modifications to the rule or its supporting documents. The issues raised by commenters are discussed below, by topic.

The Risk Assessment

One commenter requested that we reexamine our risk assessment that we prepared regarding the importation of fresh (chilled or frozen) ovine meat from Uruguay. The same commenter and one other requested that we conduct an additional site visit. They expressed concern that changes may have occurred in Uruguay's risk factors for FMD and in Uruguay's ability to prevent and mitigate FMD risk since we completed the risk assessment. Neither commenter mentioned any specific changes that should be investigated. One commenter also urged APHIS to specify a schedule requiring follow-up and ongoing reporting from Uruguay on FMD risk and the implementation of risk mitigation measures.

We have reevaluated the information in the assessment and have determined that it still provides an appropriate basis for our conclusion that the FMD risk from importing fresh (chilled or frozen) maturated and deboned ovine meat from Uruguay is low and that such meat may be safely imported into the United States. Based on our review of the assessment, we do not think an additional site visit is warranted prior to finalizing the proposed rule.

Regarding the need for ongoing reporting from Uruguay, as part of the implementation of this final rule, we will require MGAP to submit an operational workplan, subject to APHIS' approval, that details activities that MGAP will carry out to meet the requirements of the regulations. Additionally, paragraph (k) of § 94.22 requires the establishment in Uruguay in which the bovines and sheep are slaughtered to allow an APHIS representative to make periodic on-site evaluations and subsequent inspections of its facilities, records, and operations. MGAP's operational workplan will have to specifically authorize the on-site evaluations and inspections of facilities, records, and operations. APHIS regulations in 9 CFR part 92 also address the potential need for APHIS to obtain additional information from a region after APHIS has granted the region animal health status. In particular, under § 92.2(g), a region may be required to submit additional information pertaining to animal health status or allow APHIS to conduct additional information collection activities in order for that region to maintain its animal health status. We believe these provisions, collectively, will enable APHIS to satisfactorily monitor the fresh meat import program.

Prohibitions on the Importation of Meat Following an FMD Outbreak

One commenter stated that the proposed prohibition on the export of fresh beef or ovine meat to the United States until 12 months after depopulation, cleaning, and disinfection of the last premises involved in an FMD outbreak does not merely clarify existing policy, as APHIS stated in its proposed rule. Rather, since the current requirement for fresh beef from Uruguay is 12 months following the last diagnosis of FMD, the proposed change would impose new, more stringent requirements for the importation of beef from Uruguay. The commenter also stated that, to be consistent with standards of the World Organization for Animal Health (OIE) and the principle of regionalization, the prohibition on exports should be limited to 6 months and apply only to exports from restricted zones for FMD that would be established by MGAP in response to a limited outbreak in Uruguay, rather than to exports from anywhere in the country.

FMD is a significant disease of livestock, and its introduction into the United States could have a lasting deleterious effect on the U.S. agricultural economy. In regions that vaccinate animals for FMD, it can be difficult to detect the disease, and APHIS believes that sufficient time must pass to ensure that ruminant products exported from the region will not be a vector of the FMD virus. Depopulation, cleaning, and disinfection of infected premises are standard practices in stamping out FMD. After considering this comment, though, we have decided that there is no need to build this language into the rule. If a country experiences an outbreak of FMD and there is no diagnosis of the disease in a 12-month period following the last case, APHIS considers this to be sufficient reason to conclude that the disease did not spread. Therefore, we will leave the provision as it is currently worded in the provisions for fresh beef: Foot-and-mouth disease has not been diagnosed in Uruguay within the previous 12 months.

Consistent with the OIE principle of regionalization, APHIS regulations in 9 CFR part 92 explain how a country may request APHIS recognition of regions within its borders. In requesting to export fresh (chilled or frozen) ovine meat to the United States, Uruguay did not ask APHIS to recognize restricted zones as regions in the event of an FMD outbreak, or provide sufficient information for us to evaluate the risk of disease spread from such zones in order to allow for regionalization at that level.

The Maturation Process

One commenter questioned the need for a minimum 36-hour maturation period. Noting that the key indicator for ensuring deactivation of the FMD virus is a pH of 6.0 or lower, the commenter stated that if a pH of 5.8 is reached within 24 hours, then the virus will be deactivated and there is no need for an additional holding period. The commenter stated that the 36-hour holding period creates logistical problems for the packinghouses, which must hold carcasses in chillers, and is inconsistent with the requirements of other countries that apply a pH requirement of either 5.8 or 6.0, with a required holding period of 24 hours, for the export of Uruguayan meat to their markets. The commenter urged to require a minimum holding period of 24 hours.

We agree with the commenter that the acidification necessary to inactivate the FMD virus can be achieved within 24 hours and are modifying § 94.22(i) in this final rule accordingly. Twenty-four hours will be the minimum time required for maturation. If the required pH is not achieved during 24 hours, the meat may continue to maturate for up to an additional 24 hours (48 hours total). Any meat that has not achieved the required pH level in that amount of time may not be exported to the United States.

We have also determined that a pH lower than 6.0 in the longissimus dorsi, in conjunction with other conditions included in this final rule, is a good indicator of FMD virus inactivation. Our review of the literature revealed that acidification at that level is sufficient to inactivate FMD virus in muscle tissue of viremic cattle. Furthermore, over 30 years of epidemiological data show that there is no evidence that importation of fresh beef that reached a pH of less than 6.0 under conditions that are already incorporated into the regulations and that are analogous to those contained in this final rule (e.g., antemortem and postmortem inspection, lymph node removal, deboning, and maturation) have been associated with outbreaks of FMD. Therefore, in § 94.22(i) of this final rule, the meat will be required to reach a pH of less than 6.0, rather than 5.8 or less, as we had originally proposed.

Removal of Bones

One commenter stated that there is no basis for limiting approval for export of ovine meat to boneless products because there has been no evidence of FMD in sheep in Uruguay since the country requested access for fresh beef exports in 2003.

We proposed to require that all bone, as well as visually identifiable blood clots and lymphoid tissue, be removed from fresh ovine meat prior to export to the United States from Uruguay. The same requirement has been in place for fresh beef exported from Uruguay.

As we noted in both our risk assessment and in the proposed rule, although the last case of FMD in Uruguay was in 2001, FMD is endemic in areas of South America surrounding Uruguay, and there is, accordingly, a risk that FMD will be reintroduced into the country. Uruguay vaccinates cattle for FMD in recognition of that risk. Each of the conditions we proposed, including this one, addresses a critical point in the pre-export process, from selection of an animal for slaughter to carcass processing and maturation, where FMD risk can be mitigated. The conditions were selected based on known modes of transmission and physical characteristics of the FMD virus. Maturation of the meat addresses the risk, however small, of FMD virus being present in the animal at slaughter. The removal of bones and visually identifiable blood clots and lymphoid tissue is necessary because any FMD virus these parts might potentially harbor may not be inactivated by the maturation process.

Certification by Veterinary Officials in Uruguay

One commenter expressed concern about our proposed requirement that an authorized veterinary official of the Government of Uruguay certify that all conditions for the importation of beef and ovine meat have been met. The commenter stated that veterinary officials could be bribed or otherwise induced to falsely certify meat as meeting the conditions for importation, which could pose a risk of introducing FMD into the United States.

As explained in response to another comment, APHIS will be monitoring the fresh meat export program. If we determine that inspection certificates are being deliberately falsified, we may take measures pursuant to our authority under the AHPA to ensure that beef or ovine meat from Uruguay does not present a risk of introducing FMD into the United States. Such measures may include prohibiting the importation of fresh beef and ovine meat from Uruguay.

Labeling of Ovine Meat

One commenter asked whether ovine meat imported as proposed would be labeled and marketed in the United States as ''fresh.'' The commenter stated that, because the product would have been chilled or frozen, it would not meet the average U.S. consumer's definition of ''fresh'' and should not be marketed as such. The commenter also asked whether ovine meat imported from Uruguay into the United States would be subject to country-of-origin labeling.

As used in the regulations, the term ''fresh'' simply means that the meat is imported without having been cooked or cured as otherwise required of beef or ovine meat from regions not recognized as free of FMD. APHIS does not regulate the marketing of meat in the United States. Regarding country-of-origin labeling, the Country of Origin Labeling (COOL) law requires retailers to notify their customers of the country of origin for all commodities covered under this law. Muscle cuts of beef and lamb, as well as ground beef and ground lamb, are covered. The COOL law is enforced by USDA's Agricultural Marketing Service and Food Safety and Inspection Service. The COOL law is not related to animal health, but rather, is a consumer information program, and thus has no bearing on this rulemaking.

Goat Meat

One commenter expressed concern that inspectors may not know the difference between a goat kid carcass and a lamb kid carcass.

Establishments in Uruguay that prepare ovine meat for export slaughter the sheep. Live sheep are easily distinguishable from live goats. It is unlikely that a facility would slaughter a goat and present its meat as ovine meat. As discussed previously, APHIS will be monitoring the fresh meat export program, including through on-site evaluations and inspections of facilities, records, and operations.

Chronic Wasting Disease

One commenter objected to the lack of inspection for chronic wasting disease.

Chronic wasting disease (CWD) is a transmissible spongiform encephalopathy of cervids (members of Cervidae, the deer family). Species known to be susceptible to CWD via natural routes of transmission include Rocky Mountain elk, mule deer, white-tailed deer, black-tailed deer, and moose. There is no evidence that CWD is transmissible under natural conditions to any other ruminant species, including cattle and sheep, and, therefore, no need for any CWD-related safeguards.

Miscellaneous

We have made minor editorial changes to the regulatory text in § 94.22 for clarity. These include replacing ''and'' with ''or'' in the following phrases: ''beef and ovine meat,'' ''bovines and sheep,'' and ''bovine parts and ovine parts,'' and changing ''infected premises'' to ''affected premises.''

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule will allow the importation of fresh ovine meat from Uruguay into the United States under conditions that will continue to protect the United States against the introduction of FMD. We have determined that approximately 2 weeks are needed to ensure that APHIS and Department of Homeland Security, Bureau of Customs and Border

Protection, personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and the Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

This rule will allow the importation of fresh (chilled or frozen) lamb and mutton from Uruguay under certain conditions. U.S. entities potentially affected by the rule would be sheep farmers and establishments primarily engaged in processing meat and meat products from purchased meat, most of which are small entities under Small Business Administration standards.

U.S. production of lamb and mutton averaged 79,561 metric tons (MT) over the 5 years, 2006–2010. Over this same period, imports averaged almost 75,100 MT (equivalent to about 94 percent of U.S. production). Uruguay expects its annual lamb and mutton exports to the United States not to exceed 2,000 MT. This quantity is equivalent to less than 3 percent of U.S. lamb and mutton imports and less than 2 percent of U.S. domestic supply of these commodities. A percentage of the imports from Uruguay are likely to displace some of the lamb and mutton imported from existing foreign suppliers, further dampening any possible effects for U.S. businesses.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the importation of ovine meat from Uruguay under the conditions specified in the rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.[2] Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 799–7039 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under FOR FURTHER INFORMATION CONTACT.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0372.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, NEWCASTLE DISEASE, HIGHLY PATHOGENIC AVIAN INFLUENZA, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, SWINE VESICULAR DISEASE, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 94.1 is amended by revising paragraph (b)(4) and the introductory text of paragraph (d) to read as follows:

§ 94.1 Regions where rinderpest or foot-and-mouth disease exists; importations prohibited.

* * * * *

(b) * * *

(4) Except as provided in § 94.22 for fresh (chilled or frozen) beef and ovine meat from Uruguay.

* * * * *

(d) Except as otherwise provided in this part, fresh (chilled or frozen) meat of ruminants or swine raised and slaughtered in a region free of foot-and-mouth disease and rinderpest, as designated in paragraph (a) of this section, and fresh (chilled or frozen) beef and ovine meat exported from Uruguay in accordance with § 94.22, which during shipment to the United States enters a port or otherwise transits a region where rinderpest or foot-and-mouth disease exists, may be imported provided that all of the following conditions are met:

* * * * *

■ 3. Section 94.22 is revised to read as follows:

[2] Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0085.* The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

§ 94.22 Restrictions on importation of beef and ovine meat from Uruguay.

Notwithstanding any other provisions of this part, fresh (chilled or frozen) beef and ovine meat from Uruguay may be exported to the United States under the following conditions:

(a) The meat is beef or ovine meat from animals that have been born, raised, and slaughtered in Uruguay.

(b) Foot-and-mouth disease has not been diagnosed in Uruguay within the previous 12 months.

(c) The meat comes from bovines or sheep that originate from premises where foot-and-mouth disease has not been present during the lifetime of any bovines and sheep slaughtered for the export of beef and ovine meat to the United States.

(d) The meat comes from bovines or sheep that were moved directly from the premises of origin to the slaughtering establishment without any contact with other animals.

(e) The meat comes from bovines or sheep that received ante-mortem and post-mortem veterinary inspections, paying particular attention to the head and feet, at the slaughtering establishment, with no evidence found of vesicular disease.

(f) The meat consists only of bovine parts or ovine parts that are, by standard practice, part of the animal's carcass that is placed in a chiller for maturation after slaughter. The bovine and ovine parts that may not be imported include all parts of the head, feet, hump, hooves, and internal organs.

(g) All bone and visually identifiable blood clots and lymphoid tissue have been removed from the meat.

(h) The meat has not been in contact with meat from regions other than those listed as free of foot-and-mouth disease and rinderpest under § 94.1(a).

(i) The meat comes from carcasses that were allowed to maturate at 40 to 50 °F (4 to 10 °C) for a minimum of 24 hours after slaughter and that reached a pH below 6.0 in the loin muscle at the end of the maturation period. Measurements for pH must be taken at the middle of both *longissimus dorsi* muscles. Any carcass in which the pH does not reach less than 6.0 may be allowed to maturate an additional 24 hours and be retested, and, if the carcass still has not reached a pH of less than 6.0 after 48 hours, the meat from the carcass may not be exported to the United States.

(j) An authorized veterinary official of the Government of Uruguay certifies on the foreign meat inspection certificate that the above conditions have been met.

(k) The establishment in which the bovines and sheep are slaughtered allows periodic on-site evaluation and subsequent inspection of its facilities, records, and operations by an APHIS representative.

(Approved by the Office of Management and Budget under control number 0579–0372)

Done in Washington, DC, this 7th day of November 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–27285 Filed 11–13–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2010–BT–PET–0047]

RIN 1904–AC57

Energy Conservation Program: Request for Exclusion of 100 Watt R20 Short Incandescent Reflector Lamp From Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for certain commercial and industrial equipment and various consumer products, including incandescent reflector lamps (IRLs). The U.S. Department of Energy (DOE) received a petition from the National Electrical Manufacturers Association requesting the initiation of a rulemaking to exclude from coverage under EPCA standards a certain type of IRL marketed for use in pool and spa applications. Specifically, the lamp at issue is a 100-watt R20 short (having a maximum overall length of 3 and ⅝ or 3.625 inches) IRL (''R20 short lamp''). DOE published this petition and a request for comment in the **Federal Register** on December 23, 2010. From its evaluation of the petition and careful consideration of the public comments, DOE decided to grant the petition for rulemaking. DOE published a request for information in the **Federal Register** on September 8, 2011, followed by a notice of proposed rulemaking published in the **Federal Register** on December 31, 2012. Based on data gathered by DOE and the comments it received on these notices, DOE excludes R20 short lamps from coverage under the EPCA energy conservation standards.

DATES: The effective date of this rule is December 16, 2013.

ADDRESSES: The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at regulations.gov. All documents in the docket are listed in the regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket Web page can be found on regulations.gov, under docket number EERE–2010–BT–PET–0047, at: *www.regulations.gov/#!docketDetail;D=EERE-2010-BT-PET-0047.* The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *incandescent_reflector_lamps@ee.doe.gov*.

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *celia.sher@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Summary of the Final Rule

The Energy Policy and Conservation Act of 1975 (''EPCA'' or ''the Act''), Public Law 94–163 (42 U.S.C. 6291 *et seq.*), as amended,[1] prescribes energy conservation standards for certain commercial and industrial equipment and various consumer products, including incandescent reflector lamps (IRLs). The National Electrical Manufacturers Association (NEMA) petitioned the U.S. Department of Energy (DOE) to undertake a rulemaking to exclude from coverage under energy conservation standards a certain type of IRL that is marketed for use in pool and spa applications. 75 FR 80731 (Dec. 23, 2010). Specifically, the lamp at issue is a 100-watt (W) R20 short (having a maximum overall length [MOL] of 3 and ⅝ [or 3.625] inches) lamp that falls within the voltage range of covered IRLs (hereafter ''R20 short lamp''). A review for exclusion is authorized under 42 U.S.C. 6291(30)(E), which allows the Secretary, by rule, to exclude from the terms ''fluorescent lamp'' and ''incandescent lamp'' any lamp for which standards would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types. Based on its review for exclusion discussed in this rule, DOE determined that pursuant to 42 U.S.C. 6291(30)(E), R20 short lamps should be excluded from coverage under the applicable energy conservation standards for IRLs.

Under EPCA, 42 U.S.C. 6291(30)(E) allows for exclusion of a lamp for which standards would not result in significant energy savings because it is designed for special applications. Thus, DOE assessed the impact of the application of R20 short lamps on the potential energy savings from standards for these lamps. The characteristics of R20 short lamps, as well as their distribution channels and marketing, indicate that they are designed for pool and spa applications. DOE determined that because the R20 short lamps serve a very small market, they will not result in significant energy savings under the applicable conservation standards.

Additionally, 42 U.S.C. 6291(30)(E) allows exclusion based on unavailability of reasonably substitutable lamp types. Therefore, DOE analyzed the characteristics of R20 short lamps to determine if reasonable substitutes were commercially available. The most likely commercially available substitute lamp required a modification to the fixture lens in order to maintain the same light distribution. Therefore, DOE concluded that the special characteristics of an R20 short lamp are not available in a reasonably substitutable lamp type.

Therefore, under 42 U.S.C. 6291(30)(E), DOE excludes R20 short lamps from coverage of energy conservation standards based on the determination that energy savings are not significant due to R20 short lamps' use in special applications and their having special characteristics not available in reasonably substitutable lamp types. Accordingly, DOE modifies the definition of ''Incandescent reflector lamp'' to include an exemption for R20 short lamps and adds a definition for ''R20 short lamp'' in 10 CFR 430.2.

II. Introduction

A. Authority

Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles,[2] a program covering most major household appliances (collectively referred to as ''covered products''), including the types of IRLs that are the subject of this rulemaking. In particular, amendments to EPCA in the Energy Policy Act of 1992 (EPAct 1992), Public Law 102–486, established energy conservation standards for certain classes of IRLs and authorized DOE to conduct two rulemaking cycles to determine whether those standards should be amended. (42 U.S.C. 6291(1), 6295(i)(1) and (3)–(4)) DOE completed the first cycle of amendments by publishing a final rule in July 2009 (hereafter ''2009 Lamps Rule''). 74 FR 34080 (July 14, 2009).[3] Standards adopted in the 2009 Lamps Rule will hereafter be referred to as the ''July 2012 standards.''

The EPAct 1992 amendments to EPCA also added as covered products certain IRLs with wattages of 40 W or higher and established energy conservation standards for these IRLs. Section 322(a)(1) of the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, subsequently expanded EPCA's definition of ''incandescent reflector lamp'' to include lamps with a diameter between 2.25 and 2.75 inches.[4] (42 U.S.C. 6291(30)(C)(ii)) This addition made R20 lamps (having a diameter of 20⁄8, or 2.5, inches) covered products subject to EPCA's standards for IRLs.

Although these lamps are covered products, 42 U.S.C. 6291(30)(E) gives DOE the authority to exclude these lamps upon a determination that standards ''would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types.''

B. Background

The Administrative Procedure Act (APA; 5 U.S.C. 551 *et seq.*), provides, among other things, that ''[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.'' (5 U.S.C. 553(e)) Pursuant to this provision of the APA, NEMA petitioned DOE for a rulemaking to exclude a type of IRL from coverage of energy conservation standards. Specifically, NEMA sought exclusion for R20 short lamps marketed for use in pools and spas. These lamps are sold in jurisdictions that allow pools and spas to be supplied with 120-volt (V) electricity. 75 FR 80731 (Dec. 23, 2010).

As stated in the previous section II.A, amendments to EPCA in EISA 2007 expanded EPCA's definition of IRLs to include smaller diameter lamps, such as the R20 lamps that are the subject of this rulemaking. (42 U.S.C. 6291(30)(C)(ii)) The related statutory standards required compliance on June 15, 2008—180 days after the date of enactment of EISA 2007. (42 U.S.C. 6295(i)(1)(D)(ii)) Although R20 short lamps were required to comply with these standards, noncompliant R20 short

[1] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[3] Information regarding the 2009 Lamps Rule can be found at on regulations.gov, docket number EERE–2006–STD–0131 at *www.regulations.gov/#!docketDetail;D=EERE-2006-STD-0131* and on DOE's Building and Technologies Web page for Incandescent Reflector Lamps: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/58.*

[4] Prior to the enactment of EISA 2007, this definition applied to lamps with a diameter that exceeds 2.75 inches. EISA 2007 modified this definition to make it applicable to IRLs with a diameter that exceeds 2.25 inches.

lamps remained on the market until September 2010 because the manufacturers of these lamps mistakenly believed the lamps were excluded from coverage. 75 FR at 80732 (Dec. 23, 2010). The manufacturers had relied upon the Federal Trade Commission's (FTC's) labeling rule, 16 CFR Part 305, which, until July 19, 2011, published the previous lamp definitions from the EPAct 1992 amendments of EPCA.[5] Before July 19, 2011, the FTC labeling regulations treated IRLs as general service incandescent lamps (GSILs), and erroneously continued to define GSILs as not including lamps specifically designed for ''[s]wimming pool or other underwater service.'' 16 CFR 305.3(m)(3) (2010) This exclusion was eliminated from EPCA by section 321 of EISA 2007. Upon realization that the FTC definitions were incorrect and the R20 short lamps were subject to energy conservation standards, the manufacturers removed the product from the market. Subsequently, in November 2010, NEMA submitted its petition to exclude R20 short lamps from coverage under EPCA standards. DOE published the petition in the **Federal Register** on December 23, 2010, and requested public comment. 75 FR 80731.

In the petition, NEMA asked for a rulemaking to exclude R20 short lamps from coverage of energy conservation standards, as well as a stay of enforcement pending that rulemaking. As grounds for the petition, NEMA stated that R20 short lamps qualify for exclusion under 42 U.S.C. 6291(30)(E), which allows the Secretary to exclude a fluorescent or incandescent lamp ''as a result of a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types.'' In its petition, NEMA contended that a rulemaking would find that energy conservation standards for R20 short lamps would not result in significant energy savings and that the lamp was designed for special applications or has special characteristics not available in substitute lamp types. Specifically, NEMA argued that because the lamp has a particular MOL and is specially designed to meet underwater illumination requirements of pool and spa manufacturers (including designated beam spread and lumen output), there are no substitute products on the market for this application. 75 FR at 80732 (Dec. 23, 2010).

Additionally, NEMA asserted that having energy conservation standards for this lamp type would lead to its unavailability in the United States. To the best of NEMA's and manufacturers' knowledge, the decision of the two manufacturers of R20 short lamps to withdraw the product from the market had already resulted in its current unavailability. 75 FR at 80732–80733 (Dec. 23, 2010).

After reviewing NEMA's petition and all comments received in response,[6] DOE concluded it has the legal authority to grant exclusions for IRLs under 42 U.S.C. 6291(30)(E) and initiated a rulemaking to make a determination on exclusion. DOE granted NEMA's petition for a rulemaking in a request for information (RFI) published in the **Federal Register** on September 8, 2011, announcing its decision and requesting more information on this product. 76 FR 55609. The RFI stated that DOE granted the petition for a rulemaking pursuant to the requirements specified in section 6291(30)(E), and would also grant a stay of enforcement pending the outcome of the rulemaking. In the RFI, DOE also specifically asked for comment on (1) the potential for unregulated R20 short lamps to be used as substitutes for other lamps subject to energy conservation standards; (2) whether the distinctive features, pricing, and application-specific labeling and marketing of R20 short lamps provide a sufficient deterrent to their use in other applications; (3) the availability of substitute lamps that would meet both energy conservation standards and relevant pool and spa application requirements; and (4) the technological feasibility of R20 short lamps complying with the prescribed energy conservation standards and also meeting relevant pool and spa application requirements. 76 FR at 55614.

DOE reviewed all comments received in response to the RFI and conducted an analysis on the exclusion of R20 short lamps that included market research and manufacturer interviews. DOE then published a notice of proposed rulemaking (NOPR) in the **Federal Register** addressing comments and stating DOE's proposal to exclude R20 short lamps from energy conservation standards. 77 FR 76959 (Dec. 31, 2012). California Investor Owned Utilities, the Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison, (hereafter the ''CA IOUs''); Earthjustice and the National Resources Defense Council (hereafter ''Earthjustice and NRDC''); and NEMA responded to the proposal and DOE considered these additional comments when developing this final rule. DOE's responses to these comments and the final analysis on the determination of exclusion of R20 short lamps from energy conservation standards are discussed in the following section.

III. General Discussion

A. Authority

In response to the NOPR, DOE received comment from Earthjustice and NRDC regarding DOE's authority to exclude R20 short lamps under 42 U.S.C. 6291(30)(E). Earthjustice and NRDC referred to their previous comments made in response to NEMA's petition, that section 6291(30)(E) can only apply to lamps for which significant energy savings would not be captured under future standards; the language of the provision (i.e., ''would not result'') does not permit DOE to apply it retroactively to lamps with existing standards. (Earthjustice and NRDC, No. 15 at p. 1; [7] Earthjustice and NRDC, No. 8 at p. 1)

As stated in the NOPR and RFI, the plain language of section 6291(30)(E) gives DOE the authority to exclude certain lamps for which standards would not result in significant energy savings. DOE does not believe this section applies only to standards that have not yet taken effect. Under 42 U.S.C. 6295(o)(3), DOE is already barred from adopting standards for any product for which the standards would not result in significant conservation of energy. Therefore, section 6291(30)(E) would be rendered redundant and superfluous, if it applied only to products for which standards are not yet in effect. Instead, DOE finds that section 6291(30)(E) contains no time bar for undertaking a rulemaking action to address a lamp for which standards would not result in significant energy savings because it is designed for special applications or has special characteristics not available in substitutable lamp types. Given the

[5] The FTC published a final rule in the **Federal Register** on July 19, 2010, which updated its regulations regarding its definition of general service incandescent lamp to reflect the definitional changes provided in EISA 2007. 75 FR 41696, 41713–41714. These changes were effective July 19, 2011, at which time the amendments were reflected in the Code of Federal Regulations.

[6] NEMA's petition and associated comments can be found at regulations.gov under Docket No. EERE–2010–BT–PET–0047, at *www.regulations.gov/#!docketDetail;D=EERE-2010-BT-PET-0047*.

[7] A notation in the form ''Earthjustice and NRDC, No. 15 at p. 1'' identifies a written comment that DOE has received and has included in the docket of this rulemaking. This particular notation refers to a comment: (1) Submitted by Earthjustice and NRDC; (2) in document number 15 of the docket; and (3) on page 1 of that document.

broad and growing coverage of DOE's energy conservation standards for lamps, DOE believes that Congress intended section 6291(30)(E) to provide a mechanism to address both those lamps covered by existing standards, as well as new lamps subsequently developed to which standards would otherwise apply. 76 FR at 55611 (Sept. 8, 2011); 77 FR at 76961 (December 31, 2012).

Earthjustice and NRDC disagreed that section 6291(30)(E) would be redundant if not applicable to standards that already require compliance. Earthjustice and NRDC commented that section 6291(30)(E) retains a separate relevance from section 6295(o)(3) because it enables DOE to exclude lamps from statutory standards that do not yet apply, whereas section 6295(o)(3) only applies to DOE's adoption of standards via rulemakings. (Earthjustice and NRDC, No. 8 at pp. 1–2)

The language in section 6291(30)(E) does not explicitly condition exclusions from coverage of standards based on the authority under which the standards were developed. Interpreting section 6291(30)(E) as applying to only statutory standards in order to distinguish it from section 6295(o)(3) would limit the scope of section 6291(30)(E). The language in section 6291(30)(E) does not indicate that it was Congress's intent to limit the Secretary's authority of exemption. Therefore, DOE concluded it has the authority under section 6291(30)(E) to consider excluding R20 short lamps from energy conservation standards. Based on this authority, DOE assessed whether the lamps qualify for exclusion under each criterion set forth in section 6291(30)(E), and discusses its assessment in the following sections.

B. R20 Short Lamp Special Application Design and Impact on Energy Savings

As mentioned in the previous sections, under 42 U.S.C. 6291(30)(E), DOE may determine to exclude a fluorescent or incandescent lamp provided standards for the lamp would not result in significant energy savings because the lamp is designed for special applications. DOE first established that R20 short lamps serve a special application by analyzing their design features and their marketing and distribution channels, and then evaluated the impact on energy savings from standards for R20 short lamps.

1. Special Application of R20 Short Lamps

a. R20 Short Lamp Design for Special Applications

NEMA's original petition stated that the R20 short lamp was specifically designed to meet the underwater illumination requirements of pool and spa part manufacturers. NEMA stated that the R20 short lamp's MOL, heat shield, filament, lumen output, and beam spread indicate the lamp was specifically designed for its application. 75 FR at 80733 (Dec. 23, 2010) Through interviews with lamp manufacturers and pool and spa part manufacturers, DOE was able to confirm that the R20 short lamp's MOL of 3 and ⅝ inches is required for compatibility with pool and spa fixtures; the heat shield is necessary for operation in a high temperature environment; and the lumen output range between 637 and 1022 lumens, and beam spread between 70 and 123 degrees are designed to satisfy consumer preferences, as well as building codes and standards specific for pool and spa applications. DOE also found that the filament in R20 short lamps is specifically placed to achieve the required beam spread. However, DOE concluded that filament placement does not stand on its own as a requirement for pools and spas, but is rather encompassed within the requirement for a specific beam spread. NEMA agreed with this list of special characteristics, affirming that they are representative of the R20 short lamp, and that there are no additional features to address. (NEMA, No. 14 at pp. 1) Because the described R20 short lamp characteristics are designed to meet requirements specific to pools and spas, DOE believes that R20 short lamps are designed for a special application. For more discussion on R20 short lamp features, see section III.C.

b. Marketing and Distribution Channels of R20 Short Lamps

In addition to design features, DOE also analyzed marketing literature and distribution channels for R20 short lamps when determining if R20 short lamps are designed for special applications. DOE found R20 short lamps are marketed and clearly packaged in a way that indicates the lamps are specifically for pool and spa use. Through lamp manufacturer interviews and research using publicly available information, DOE found that R20 short lamp manufacturers do not sell lamps directly to consumers. The commercial market is supplied through catalog warehouses; maintenance supply; maintenance, repair, operations (MRO) distributors; and pool and spa distributors. The residential market is primarily supplied through pool and spa distributors, which include large retail pool outlets and online retailers. Additionally, a small portion of products are sold to online retailers for pool and spa replacement parts, electrical distributors for direct installation in new pool construction, and hospitality and specialty lighting suppliers (e.g., medical equipment retail) for use with pools and spas. Therefore, DOE concluded that the application-specific packaging and non-traditional distribution channels indicate R20 short lamps are intended for pool and spa applications.

Based on the application-specific design characteristics of the R20 short lamp and the marketing and non-traditional distribution channels used by these lamp types, DOE concluded that R20 short lamps are designed for pool and spa applications. Pursuant to section 6291(30)(E), DOE then proceeded to determine whether standards for the lamp would not result in significant energy savings because the lamp is designed for a special application.

2. Impact on Energy Savings

As part of its analysis to determine the impact of standards for R20 short lamps on energy savings, DOE evaluated the market share of R20 short lamps put forth by NEMA. In its petition, NEMA stated there are only two known manufacturers of the 100 W R20 short lamp in the United States. Both manufacturers submitted their confidential R20 short lamps 2009 shipment data to NEMA. In interviews, these lamp manufacturers commented that the shipment data from 2009 is representative of the R20 short lamp market before they stopped making the lamp available to consumers in 2010. For comparison, NEMA used an adjusted estimate of covered IRL shipments from the 2009 Lamps Rule. In the 2009 Lamps Rule, DOE estimated the shipments of covered IRLs to be 181 million units in the year 2005. Based on a decline in shipments of all IRLs in 2009, NEMA assumed covered IRLs would also decline, but estimated the shipments to still remain above 100 million. Based on a minimum of 100 million and a maximum of 181 million shipments of covered IRLs, NEMA calculated that the shipments of R20 short lamps represented significantly less than 0.1 percent of 2009 shipments of covered IRLs. 75 FR at 80733 (Dec. 23, 2010).

In interviews conducted for the NOPR, DOE independently obtained shipment information from lamp manufacturers that confirmed NEMA's estimate of R20 short lamps being significantly less than 0.1 percent of 2009 shipments of covered IRLs. Therefore, DOE determined this to be an accurate assessment of the R20 short lamp market share and concluded that less than 0.1 percent of covered IRLs indicated a small market share for R20 short lamps. (More information on R20 short lamp energy use can be found in appendix B of this final rule.[8])

As well as assessing the existing market share, DOE also analyzed the potential for growth due to market migration of R20 short lamps. NEMA stated that with the R20 short lamp's small market share, specialized distribution chains, and typically high price point, their exclusion from standards does not present any significant loss in energy savings. (NEMA, No. 14 at pp. 2, 3) Earthjustice and NRDC referred to their previous comments made in response to the RFI, stating that they remain concerned that exempted R20 short lamps will migrate to applications other than pools and spas. (Earthjustice and NRDC, No. 15 at p. 1) The CA IOUs also referred to comments on the subject submitted for the RFI. Specifically, they reiterated that the size of R20 short lamps allows them to be used in applications other than pool and spa lighting, and that R20 short lamps are not necessarily more expensive than other small diameter IRLs and an increase in their production could allow manufacturers to achieve some economies of scale and lower prices further. The CA IOUs stated that DOE did not sufficiently address these two points in the NOPR. (CA IOUs, No. 16 at p. 1)

DOE agrees that R20 short lamps' MOL does not physically prohibit their use in other applications. Further, DOE had received information from lamp manufacturers stating that the end-user price varies, but typically ranges from $12 to $25. DOE market research also indicated a large variation, finding prices ranging from as low as $2 to as high as $34. Therefore, DOE acknowledges that the price of R20 short lamps can be competitive with other IRLs. However, R20 short lamps are sold through specialized distribution channels where they are marketed and packaged specifically for pool and spa applications. Additionally, even when R20 short lamps were perceived to be unregulated, there was no evidence of market migration to other applications. For these reasons, even though physical constraints may not limit their use in other applications and they may be sold at low prices, the substitution of R20 short lamps in general applications is highly unlikely.

The CA IOUs stated that while R20 lamps are sold through specific distribution channels, and are therefore unlikely to be purchased for use outside of the pool and spa lighting market, there are no rules to prevent manufacturers from selling R20 short lamps outside these distribution channels in the future. (CA IOUs, No. 16 at p. 1) The CA IOUs also noted that as consumers do more shopping online, historically hard lines between different distribution channels become increasingly blurred, and consumers have greater access to products being sold through a variety of merchants. (CA IOUs, No. 16 at pp. 1–2)

Overall, DOE did not find an indication of a potential trend towards selling R20 short lamps through general application channels. With few exceptions, DOE found that the majority of R20 short lamps available online are on Web sites selling specialty and pool and spa lighting or equipment. Therefore, even via online channels, R20 short lamps are still generally sold through designated, niche Web sites. Also, as noted in the NOPR, lamp manufacturers stated in interviews that the R20 short lamp market is primarily for replacement lamps and, therefore, historically has shown very little growth or decline. 77 FR at 76963 (December 31, 2012). Further, despite the fact that lamp manufacturers have not considered the lamps as regulated, the market share has remained extremely low and there has been no evidence of market migration. In addition to being found primarily through designated distribution channels, the lamps' packaging indicates they are specifically for pool and spa applications.

The CA IOUs also commented that even though R20 short lamps may currently be appropriately labeled for use in pools and spas only, there are no guidelines to ensure that consumers use them only in pool and spa applications. (CA IOUs, No. 16 at p. 1) Further, the CA IOUs stated that although R20 short lamps have not become a loophole previously, the new energy conservation standards for IRLs set by the 2009 Lamps Rule have required compliance since July 2012. The CA IOUs contended that because these standards increased existing lumen per watt (lm/W) standards for covered products, they provide greater incentive for excluded lamp types to become loopholes. The CA IOUs stressed that exclusion of R20 short lamps from standards is now more likely to result in significant loss of energy savings through market migration towards these products. (CA IOUs, No. 16 at p. 2)

DOE finds it unlikely that consumers will seek out R20 short lamps packaged and labeled for use in pool and spa applications as replacements for any general service lighting impacted by the standards adopted by the 2009 Lamps Rule. The definition of R20 short lamp, as added by this final rule to 10 CFR 430.2, requires that they be designed, labeled, and marketed specifically for pool and spa applications. DOE believes the use of R20 short lamps in other applications despite their packaging and marketing materials is improbable as consumers are unable to purchase R20 short lamps at typical retail outlets such as large home improvement stores. As noted in section III.B.1.b, the majority of R20 short lamps are purchased from pool and spa distributors and specialty retail stores, and are not available where general service IRLs are typically sold. In its interviews with manufacturers for various lighting regulations, DOE has consistently received feedback that when replacing lamps, consumers attempt to replace the same lamp that was previously installed. It is not typical consumer behavior to seek out alternative lamp types from unrelated niche application lighting. Therefore, DOE concluded that the R20 short lamp market has limited potential for growth, and it is unlikely the lamps will migrate to general lighting applications.

Because the specialty application of the R20 short lamps results in a small market share and limited potential for growth for these lamps, DOE concluded that the exclusion of R20 short lamps would not significantly impact the energy savings resulting from energy conservation standards.

C. Availability of R20 Short Lamp Special Characteristics in Substitutes

DOE may also exclude a lamp because its special characteristics are not available in reasonably substitutable lamp types. 42 U.S.C. 6291(30)(E) To determine whether an exclusion was acceptable based on this condition, DOE identified the special characteristics of R20 short lamps and determined whether these characteristics existed in other lamp types that would qualify as reasonable substitutes.

DOE considered a lamp characteristic special if, without it, the R20 short lamp would not be able to provide the special application for which it was designed (i.e., use in pools and spas). Therefore, even if the lamp characteristic was not

[8] The appendices can be found on regulations.gov, under docket number EERE–2010–BT–PET–0047, at *www.regulations.gov/#!docketDetail;D=EERE-2010-BT-PET-0047.*

unique to the R20 short lamp, it was deemed special if it was required for the lamp to function in pools and spas. DOE identified the following set of features that in combination allow the lamp to be used in a specialty application:

- Shortened MOL: An MOL of 3 and ⅝ inches or less;
- Heat Shield: A shield reflecting radiant energy from the lamp base;
- Beam Spread: A beam angle between 70 and 123 degrees;
- Lumen Output: A lumen output between 637 and 1,022 lumens; and
- Illumination: 0.5 W per square foot of water surface area or the equivalent.

DOE evaluated lamps that could serve as potential substitutes by determining whether they contained all of the above noted special characteristics of R20 short lamps. DOE notes that a reasonable substitute lamp may also need to be Underwriters Laboratories (UL) listed for applicable pool and lighting fixtures in order to prevent voiding fixture manufacturer warranties. As stated in the NOPR, based on interviews with pool and spa part manufacturers, DOE finds that reasonable substitutes will not encounter barriers when obtaining a UL listing. 77 FR at 76964–76965 (December 31, 2012).

DOE surveyed the market and conducted manufacturer interviews to identify several commercially available lamps that were marketed or considered by manufacturers as potential substitutes for an R20 short lamp. These lamps included a more efficacious halogen-based R20 short lamp, a smaller diameter IRL, the 60 W PAR16, and certain light-emitting diode (LED) lamps. When analyzing each of the likely replacements, DOE focused on whether they possessed the special characteristics of the R20 short lamp.

In the NOPR, DOE tentatively concluded that there were no reasonably substitutable lamp types currently available that offered the special characteristics of R20 short lamps. NEMA agreed that there are no reasonable substitute lamp designs for this application that meet energy efficiency regulations and pass safety and performance requirements for this lamp type. NEMA stressed that should inferior substitutes be forced on the market purely due to energy efficiency goals, the existing relationship between the R20 short lamps and the devices that use them would not be replicated, which could create a potential safety and liability risk. Further, NEMA noted that its members have attempted to design substitute lamps using improved energy performance solutions, only to have the products fail testing across the greater range of requirements, including energy conservation standards, safety requirements, and form factors. NEMA asserted that if it were possible to make substitute lamps, its members would have made them. (NEMA, No. 14 at p. 3)

However, the CA IOUs and Earthjustice and NRDC recommended that DOE further examine the possibility of a reasonable substitute for R20 short lamps. (Earthjustice and NRDC, No. 15 at p. 1; CA IOUs, No. 16 at pp. 2–4) DOE responds to their specific comments and presents its final assessment in the following sections.

1. Improved R20 Short Lamp

Currently, R20 short lamps use incandescent technology and do not meet previous energy conservation standards or the existing standards adopted in the 2009 Lamps Rule that required compliance in July 2012. In the NOPR, DOE investigated the potential of improving the efficacy of R20 short lamps using halogen capsules, also called halogen burners, known to improve the efficacy of IRLs. Halogen capsules consist of a small diameter, fused quartz envelope filled with a halogen molecule that surrounds the lamp's filament. Through teardowns, testing, calculations, and interviews, DOE's NOPR analysis concluded that although it is potentially feasible to incorporate a halogen burner into an R20 short lamp, the expected improvement in efficacy would not be enough to meet or exceed the July 2012 standards.

The CA IOUs urged DOE to undertake a more rigorous analysis of the achievable efficacy of R20 short lamps with halogen burners. They requested more detail on DOE's modeling approach and why DOE was unable to model a more efficacious halogen-based R20 lamp. As efficacy generally increases with lamp wattage, and none of the special characteristics were reported to affect efficacy, the CA IOUs found it unlikely that the modeled 75 W halogen R20 short lamp with a single-ended burner had a theoretical efficacy of only 10.3 lm/W. Specifically, they noted that the 45 W halogen R20 lamp used by DOE to scale to a 75 W halogen R20 short lamp would be compliant with the existing energy conservation standards and therefore, presumably have a minimum efficacy of 14.0 lm/W. Similarly, the CA IOUs questioned that the modeled 75 W halogen R20 short lamp with a double-ended burner had a theoretical efficacy of only 13.8 lm/W. (CA IOUs, No. 16 at p. 2)

In the NOPR analysis, DOE modeled efficacies at 75 W for an R20 short lamp in two scenarios, one using single-ended burner technology, and the second using double-ended burner technology. DOE developed these lamps by scaling from commercially available lamps. DOE selected a 45 W halogen R20 lamp with a single-ended burner that had a rated efficacy of 9.3 lm/W. Because the selected lamp is excluded[9] from the existing standards for IRLs specified in 10 CFR 430.32(n)(5), it is not required to meet the minimum standard of 14.0 lm/W as assumed by the CA IOUs. When this lamp was scaled to a 75 W lamp with a single-ended burner, the efficacy improved to 10.3 lm/W. (More information on the scaling methodology can be found in appendix A of the NOPR.[10])

To model the R20 short lamp with a double-ended burner, DOE used the tested double-ended burner efficacy for a standards-compliant 60 W PAR30 short lamp and added an average reflector efficiency factor of 62.2 percent, based on tested reflector efficiencies of R20 lamp types, to calculate an efficacy of 13.5 lm/W. When scaled to a 75 W lamp with a double-ended burner, the resulting efficacy improved to 13.8 lm/W. (More information on the scaling methodology can be found in appendix A of the NOPR.)

Therefore, as expected, in both scenarios the efficacies of the scaled higher wattage lamps were greater than the efficacies of the lower-wattage lamps from which they were scaled. However, because the lower-wattage lamp used to model an R20 short lamp with a single-ended burner is excluded from existing standards and has a lower efficacy than 14.0 lm/W, the modeled lamp would not necessarily meet current standards. Similarly, while a standards-compliant lamp's burner efficiency was used to model an R20 short lamp with a double-ended burner, the inclusion of an R-shaped reflector efficiency allows for the possibility that the modeled lamp would not be compliant to standards.

The CA IOUs also questioned whether using the Illuminating Engineering Society of North America (IESNA) scaling equations alone can sufficiently capture the full range of benefits from moving to more efficient halogen burners. The CA IOUs gave the example of there possibly being some temperature advantages to using halogen or halogen infrared (HIR) burners due to less waste heat

[9] For a full list of exclusions see 10 CFR 430.32(n)(6)(ii).

[10] Appendix A from the NOPR can be found on regulations.gov, under docket number EERE–2010–BT–PET–0047, at *www.regulations.gov/#!docketDetail;D=EERE-2010–BT-PET-0047.*

generation. (CA IOUs, No. 16 at pp. 2–3) The improved R20 short lamps are modeled using a set of industry-accepted IESNA equations. DOE believes these equations offer an accurate theoretical assessment of lamp performance based on a relationship between lifetime, lumens, and wattage.

Stakeholders recommended additional modeling scenarios in order to explore other pathways to a more efficacious R20 short lamp. The CA IOUs questioned DOE's decision to base the modeled R20 short lamp with a double-ended burner on a PAR30 short lamp with a double-ended burner, as its efficacy had to be discounted to account for the different reflector shape. The CA IOUs suggested DOE base the analysis on the 40 W Philips Halogena Energy Saver R20 lamp with a double-ended burner, so there would be no need to adjust the results for reflector efficiency. The CA IOUs also noted that the Philips Halogena R20 lamp has an efficacy of 14.25 lm/W, making it compliant with standards.[11] (CA IOUs, No. 16 at p. 2) The CA IOUs further recommended that DOE consider modeling the theoretical double-ended burner lamp with a higher efficiency reflector (as opposed to the average reflector efficiency for R20 lamps), given that the primary goal of the analysis is to determine achievable efficiency improvements for the product. (CA IOUs, No. 16 at p. 2) The CA IOUs had also noted that it might be possible to redesign other aspects of the lamp to better support halogen burners. (CA IOUs, No. 16 at pp. 2–3) Earthjustice and NRDC similarly encouraged DOE to seek additional information on the technical feasibility of improving the efficacy of R20 short lamps. (Earthjustice and NRDC, No. 15 at p. 1) In this final rule, taking into consideration the preceding recommendations from stakeholders, DOE modeled the performance of R20 short lamps utilizing HIR technology and also a more efficient reflector to determine if an improved R20 short lamp could be a viable substitute.

DOE identified commercially available HIR R20 lamps with single-ended or double-ended burners to use in modeling an HIR R20 short lamp with performance characteristics comparable to a 100 W incandescent R20 short lamp. While the specific Philips lamp suggested by the CA IOUs was no longer listed in their catalog, DOE was able to identify a currently available HIR R20 lamp with a double-ended burner with the same efficacy. Including this lamp, DOE identified a 40 W HIR R20 lamp with a single-ended burner, two 40 W HIR R20 lamps with double-ended burners, and one 45 W HIR R20 lamp with a double-ended burner.

DOE then performed teardowns to determine the dimensional compatibility of the identified HIR R20 lamps' halogen capsules with an R20 short lamp. Based on the dimensions of the burners and the R20 short lamp, DOE concluded that it is not possible to fit the double-ended halogen burners found in commercially available HIR R20 lamps in an R20 short lamp; it is possible, however, to fit the single-ended burner. Therefore, for this final rule, DOE used the HIR R20 lamp with a single-ended burner to model a more efficacious R20 short lamp. Because DOE could not identify a double-ended HIR R20 lamp with a capsule that was dimensionally compatible with an R20 short lamp, DOE continued to use the 60 W HIR PAR30 short lamp tested for the NOPR to model an HIR R20 short lamp with a double-ended burner. A double-ended burner is more efficient than a single-ended burner because it has the lead wire outside of the capsule, where it does not interfere with the reflectance of energy from the capsule wall back to the capsule filament. This limits the loss of energy and raises the filament temperature, resulting in an increase in lamp efficacy.

To model an HIR R20 short lamp with a single-ended burner, DOE tested the efficacy of the identified 120 V, 40 W HIR R20 lamp with the dimensionally compatible single-ended burner. Using the IESNA equations relating lifetime, lumens, and wattage, DOE scaled the lumen output of the 40 W lamp in three scenarios, with the lumen output reasonably close to the minimum, maximum, and average lumen output of the desired range (637 and 1,022 lumens). Typically R20 short lamps have a lifetime of 2,000 or 2,500 hours. For this analysis, DOE assumed the maximum rated lifetime of 2,500 hours. Through these scaling calculations, DOE found that in the average lumen output scenario, the efficacy of the R20 short lamp could potentially be improved to meet the July 2012 standards with the use of HIR technology and a single-ended burner. For the maximum lumen output scenario the efficacy of the modeled lamp did not meet the July 2012 standards. In order to achieve the minimum lumen output, the modeled lamp wattage was reduced to lower than 45 W, thereby excluding the lamp from existing standards for IRLs specified in 10 CFR 430.32(n)(5).[12] For more information on the improved efficacy calculations, see appendix A of this final rule.[13]

To determine the efficacy of an HIR R20 lamp with a double-ended burner, DOE revised the scaling analysis conducted for the NOPR by analyzing in addition to an average efficiency reflector, a more efficient reflector. DOE utilized the NOPR test results of the burner efficiency of a 120 V, 60 W PAR30 short lamp with a double-ended burner that is dimensionally compatible with an R20 short lamp. Using the IESNA equations relating lifetime, lumen output, and wattage, DOE first scaled the lumen output of the 60 W lamp with the average reflector efficiency in three scenarios, with the lumen output reasonably close to the minimum, maximum, and average lumen output of the desired range (637 and 1,022 lumens). DOE again assumed the maximum rated lifetime of R20 short lamps (2,500 hours). DOE found for the average lumen output and maximum lumen output scenarios that the efficacy of the modeled R20 short lamp with average reflector efficiency would not meet the July 2012 standards. However, DOE found for the minimum lumen output scenario, the efficacy of the R20 short lamp could potentially be improved to meet the July 2012 standards with the use of HIR technology with a double-ended burner.

As suggested by the CA IOUs, DOE then conducted the same analysis for the 60 W lamp with a higher efficiency reflector. DOE found for the average lumen output and maximum lumen output scenarios that the efficacy of the R20 short lamp could potentially be improved to meet the July 2012 standards with the use of HIR technology with a double-ended burner and improved reflector. In order to achieve the minimum lumen output, the modeled lamp wattage was reduced to lower than 45 W, thereby excluding the lamp from existing standards for IRLs specified in 10 CFR 430.32(n)(5).[14] For more information on the improved efficacy calculation, see appendix A of this final rule.[15]

DOE notes that there is uncertainty associated with the theoretical modeling

[11] Please note that the referenced lamp is excluded from the existing IRL standards specified in 10 CFR 430.32(n)(5). See 10 CFR 430.32(n)(6)(ii) for a list of exclusions.

[12] For a full list of exclusions see 10 CFR 430.32(n)(6)(ii).

[13] Appendix A can be found on regulations.gov, under docket number EERE–2010–BT–PET–0047, at *www.regulations.gov/#!docketDetail;D=EERE-2010-BT-PET-0047*.

[14] For a full list of exclusions see 10 CFR 430.32(n)(6)(ii).

[15] Appendix A can be found on regulations.gov, under docket number EERE–2010–BT–PET–0047, at *www.regulations.gov/#!docketDetail;D=EERE-2010-BT-PET-0047*.

assessment. The modeled lamps reflect a standard R20 reflector shape rather than a short R20 reflector shape. Thus, the modeled lamp efficacies were based on R20 lamps with a longer MOL than the R20 short lamp's 3.625 inches. DOE compared standard length and long length halogen lamps that had the same shape, diameter, lifetime, voltage, and wattage, and could find no consistent relationship between lamp length and efficacy. Therefore, it is unknown how shortening the length of the reflector would impact the efficacy of the modeled lamps.

Even given this uncertainty, DOE evaluated whether the standards-compliant R20 short lamps based on the modeling described above could also include the special characteristics of the R20 short lamp. (See section III.C.) First, DOE believes that a heat shield could be included in the improved R20 short lamp as they are included in most commercially available halogen IRLs. Next, DOE also determined that because the HIR capsules were dimensionally compatible with an R20 short lamp, the shortened MOL is retained. The addition of an HIR capsule would, however, affect the lumen output and beam spread. Based on its theoretical modeling, DOE determined that an HIR R20 short lamp may have a lumen output within the established range for an R20 short lamp of 637 to 1,022 lumens.[16] However, because the position of the filament impacts the beam angle, DOE anticipates that the beam angle could be affected by the use of a halogen capsule. Because standards-compliant R20 short lamps are not commercially available, DOE is unable to confirm the beam angle of R20 short lamps that utilize an HIR capsule. However, DOE believes that the HIR R20 short lamps would likely meet the 0.5 watts per square foot of water surface area or equivalent illumination requirements because the theoretical lamps could deliver higher lumen output with reduced input wattage compared to the R20 short lamp.

Through the modeling assessment, DOE determined that the efficacy of an R20 short lamp could potentially be improved through the use of HIR technology. However, DOE cannot be certain of the improvement in efficacy due to the fact that the commercially available lamps from which the more efficacious R20 short lamps were scaled did not have the same reflector length as the R20 short lamp. Moreover, it is not clear that the more efficacious R20 short lamp would be able to achieve the combination of the special characteristics because HIR technology has not yet been incorporated in a commercially available R20 short lamp. Therefore, the modeled efficacy and performance characteristics of the HIR R20 short lamp could be affected by adjustments required to accommodate these features. Thus, DOE was unable to conclude, based on its modeling, whether an improved R20 short lamp could be compliant with standards and also include all the special characteristics of a R20 short lamp.

If DOE concluded that the special characteristics of R20 short lamps prohibit the lamps from reaching efficacy levels achievable by other R20 lamps, the CA IOUs suggested DOE use the relationship between these lamp characteristics and efficacy to scale the existing standards to accommodate R20 short lamps, instead of granting a full exception from standards. (CA IOUs, No. 16 at p. 3) The authority of this rulemaking is based on 42 U.S.C. 6291(30)(E), which is limited to determining whether or not lamp types should be excluded from energy conservation standards. 42 U.S.C. 6291(30)(E) does not grant DOE the authority to establish unique energy conservation standards for these lamps.

2. 60 W PAR16 Lamp

In addition to analyzing HIR R20 short lamps as a reasonable substitute, DOE also analyzed 60 W PAR16 lamps. In the NOPR, DOE determined that the 60 W PAR16 lamp must be partnered with a fixture with an optimized LED lens to achieve the appropriate beam angle and does not contain all of the special characteristics of a R20 short lamp by itself. 77 FR at 76966–67 (December 31, 2012). NEMA agreed that the 60 W PAR16 lamp is therefore not an acceptable substitute for R20 short lamps. NEMA allowed that 60 W PAR16 lamps may provide adequate lumens and meet total illumination requirements without an additional lens, but emphasized that their beam angle does not provide the same total illumination throughout the pool or spa. NEMA further clarified that because 60 W PAR16 lamps produce a targeted cone of light output, areas of the pool or spa where the lamp fixture is not directed would not be illuminated, creating safety issues. Additionally, NEMA noted that the R20 short lamp has been optimized for the fixture and the application, as corroborated by DOE's analysis, and a substitute, lower-wattage lamp would not provide the same service. (NEMA, No. 14 at p. 2)

For this final rule, DOE again evaluated the 60 W PAR16 lamp and found no change in its characteristics. Therefore, DOE maintains that because the 60 W PAR16 lamp alone cannot achieve the required beam spread for R20 short lamps, the lamp is not a reasonable substitute.

3. LED Lamps

In the NOPR, DOE also evaluated whether commercially available LED lamps could serve as reasonable substitutes for R20 short lamps. DOE determined that because they do not have the required special characteristics of R20 short lamps, specifically lumen output and beam spread, they are not reasonable substitutes. Furthermore, DOE did not consider LED lamp and fixture replacements as reasonable substitutes because they require more than the lamp to be replaced. 77 FR at 76967 (December 31, 2012).

Earthjustice and NRDC and the CA IOUs encouraged DOE to seek additional information on compliant LED lamps that could be reasonable substitutes. (Earthjustice and NRDC, No. 15 at p. 1; CA IOUs, No. 16 at p. 3) Specifically, the CA IOUs commented that LED technology has advanced rapidly in recent years, and LED light sources increasingly are used in many different applications. The CA IOUs stated that they have found several examples of commercially available pool and spa LED lamps sold by online retailers that could be alternatives to R20 short lamps. While these products are currently more expensive, the CA IOUs contended that they offer energy cost savings, longer lifetimes, and lower maintenance costs. The CA IOUs also noted that LED lamp costs are forecasted to fall quickly in the coming years as LED technology continues to mature. (CA IOUs, No. 16 at p. 3)

In the NOPR analysis, DOE had conducted market research to identify any commercially available LED lamps determined to be compatible with the R20 short lamp fixture and to have the required special characteristics of R20 short lamps. For this final rule, DOE updated its market analysis and verified the conclusions of the NOPR assessment; DOE did not find any LED lamps that had the necessary requirements of lumen output or beam spread.

The CA IOUs remarked that while DOE acknowledged that the PAR16 and LED replacement lamps are currently being used, DOE still claimed that these lamps should not be considered substitute products because neither lamp type is demonstrating full equivalency in terms of lumen output

[16] Note that, as modeled, the lamps have the necessary lumen output, but DOE is uncertain of the impact of a shorter reflector length.

and/or measured light distribution. The CA IOUs suggested this reasoning is not applicable when comparing LED to incandescent lighting in pool and spa applications. Pool and spa LEDs can be designed to provide cooler light compared to incandescent lamps, with higher intensity at shorter wavelengths within the spectrum of visible light. The CA IOUs explained that water has a higher optical absorption coefficient at longer wavelengths, which effectively acts as a filter that allows more cool light than warm light to pass through. Therefore, LED lamps need fewer total lumens to light a pool and will provide more even illumination with fewer ''hot spots'' than incandescent lighting. For these reasons, the CA IOUs argued that comparisons of lumen output and light distribution for pool and spa lighting should not be based on raw measurements of the light source outside of the fixture. (CA IOUs, No. 16 at p. 3)

In support of this argument, the CA IOUs referred to a 2010 emerging technology study wherein they evaluated the performance of incandescent and LED lamps in pool and spa lighting applications.[17] The CA IOUs stated that the study measured the light output and distribution of R20 lamps and several LED replacement products (both lamps and fixtures) at the surface of a pool, and generally found the quality of light provided by the LED products was superior in terms of brightness and evenness of distribution. The CA IOUs also noted that LED pool and spa lighting products have probably continued to improve in the three years since this study was completed. (CA IOUs, No. 16 at p. 3)

DOE reviewed the study referenced by the CA IOUs to further assess the possibility of LED lamps as a reasonable substitute for R20 short lamps. The study did find that uniformity and light levels improved relative to incandescent lighting in pools, but mainly for replacements of both lamp and fixture. For direct replacement LED lamps, the study noted that while they had the potential to improve uniformity, the results were less constant and in some cases poorer than those of the preexisting incandescent lighting.[18] Further, the study stated that direct replacement LED lamps tend to fall in the ''one size fits all'' category, limiting their ability to provide the performance needed in certain applications.[19] As noted previously, DOE concluded the criteria for a reasonable substitute must be met by the lamp alone. Based on the study, the direct replacement lamps tested did not consistently meet light levels compared to incandescent lighting.

The CA IOUs suggested that the ''blue filter'' effect causes the underwater performance of lumens to differ from the absolute lumen output as measured outside the underwater fixture. Thus, using measured lumens as a criterion to identify a reasonable substitute is unsuitable for this application. (CA IOUs, No. 16 at pp. 3–4) However, the study noted that the influence of the ''blue filter'' effect on pool lighting is proportional to pool size. The effect is greater in larger pools where light must travel long distances, than in spas where light travels shorter distances.[20] The variation in this phenomenon makes it problematic to develop an accurate and consistent light level metric. Further, a light level metric based on this effect cannot be used to determine replacements for all R20 short lamps, as the blue filter effect is not significant in small pools. Hence, lumen output remains a more consistent and reliable metric of gauging the suitability of a replacement lamp for the R20 short lamp in all pool and spa applications, and can be applied across technologies, including LED lamps.

Finally, the study acknowledged that LED pool lighting systems would have difficulty meeting the 0.5 W per square foot or equivalent illumination building code requirement. The study suggested that building code requirements should be modified to account for the spectral distribution of lumens rather than the total lumen output.[21] However, DOE must base its criteria for reasonable substitutes in this rulemaking on existing requirements.

For this final rule, DOE again evaluated commercially available LED lamps to determine whether they meet the special characteristics of R20 short lamps. DOE did not find an LED lamp that comprised all the necessary characteristics to serve as a reasonable substitute for an R20 short lamp. DOE also examined information provided by stakeholders regarding the potential improvement in pool and spa lighting by replacing incandescent with LED technology. However, because this improvement is attributable to replacement of lamp and fixture rather than only the lamp, DOE could not consider it in its evaluation of LEDs as reasonable substitutes for R20 short lamps. Further, DOE concluded that while there may be different ways to measure the illumination of a pool or spa, the lumen output range identified as a special characteristic for R20 short lamps remains a reliable metric that can be applied across technologies and for all types of pools and spas.

4. Consumer Use of Substitute Products

The CA IOUs noted that R20 short lamps have not been manufactured since 2010. In the meantime, PAR16 lamps and LED products have been successfully installed in new and existing pool and spa fixtures without noticeable negative impacts to consumers. The CA IOUs further cited their experience implementing rebate programs for LED pool lighting, noting that consumers have expressed a high degree of satisfaction when replacing their existing R20 short lamps with LEDs. The CA IOUs affirmed that in their experience, consumers are not able to distinguish small differences in the beam angle or distribution of light, particularly when the lamps are behind a lens and under water. An additional interview the CA IOUs conducted with a major distributor of pool lighting products also confirmed these findings of consumer satisfaction. (CA IOUs, No. 16 at p. 3)

DOE evaluated lamps as reasonable substitutes using a set of criteria described in the beginning of section III.C. The fact that consumers can physically replace R20 short lamps with PAR16 or LED lamps does not automatically mean they are reasonable substitutes. Rather, the necessary criteria for a reasonable substitute lamp are based on special characteristics of the R20 short lamp identified in this analysis.

The CA IOUs called attention to the fact that for new fixtures the question of light source equivalency is a non-issue, and R20 short lamp fixtures do not offer any unique functionality that cannot be met by other light sources. As new fixtures are sold together with the lamps they were designed for, fixture manufacturers are able to customize their lenses based on the source of lighting being used. (CA IOUs, No. 16 at p. 3) DOE acknowledges that a lamp and fixture replacement could adequately meet pool and spa lighting needs. However, as the scope of this rulemaking covers only the R20 short lamp itself, and not pool and spa fixtures, DOE must assess reasonable substitutes for the lamp alone.

[17] Southern California Edison. *Commercial LED Pool Lamps.* December 2010. Southern California Edison Design and Engineering Services Customer Service Business Unit:.Rosemead, CA. Report No. ET10SCE1130. Available here: *www.etcc-ca.com/images/stories/et10sce1130_-_commercial_led_pool_lighting.pdf.*

[18] Ibid, page 34.

[19] Ibid, page 38.

[20] Ibid, pages 35–36.

[21] Ibid, page 36.

IV. Conclusion

DOE has established that R20 short lamps were designed for pool and spa applications based on industry need and consumer preference. The design requirements included a wide beam spread, high lumen output, and adequate illumination; a heat shield to withstand the high operating temperatures of spas; and a shortened MOL, allowing the lamp to fit in underwater pool or spa fixtures. Further, DOE has determined that the majority of R20 short lamps are purchased from pool and spa distributors and specialty retail stores, and are not available where IRLs are typically sold for general lighting applications. R20 short lamps are also marketed and clearly packaged in a way that indicates the lamps are specifically for use in pools and spas. Therefore, DOE has concluded that R20 short lamps are designed for pool and spa applications. Due to the special application of R20 short lamps, DOE assessed the impact on energy savings from the exclusion of these lamps from energy conservation standards. As R20 short lamps have a small market share and limited potential for growth, DOE determined that the regulation of R20 short lamps would not result in significant energy savings.

DOE also evaluated lamps that could serve as potential substitutes by analyzing their ability to replicate the specialized characteristics of the R20 short lamp, specifically a shortened MOL, heat shield, high lumen output, wide beam spread, and adequate illumination. DOE concluded that there are no reasonably substitutable lamp types currently commercially available that offer the special characteristics of R20 short lamps.

Based on the assessments of this final rule, DOE determined that R20 short lamps should be excluded from energy conservation standards. DOE's analysis found that energy conservation standards for R20 short lamps would not result in significant energy savings because the lamps are designed for special applications and have special characteristics not available in reasonably substitutable lamp types. Therefore, under section 6291(30)(E), DOE excludes R20 short lamps from energy conservation standards by modifying the definition of ''Incandescent reflector lamp'' and adding a new definition for ''R20 short lamp'' in 10 CFR 430.2, as set forth in the regulatory text of this rule.

In response to the definition of R20 short lamp proposed in the NOPR, Earthjustice and NRDC commented that DOE should ensure the definition includes each of the identified special characteristics of R20 short lamps, including the incorporation of a heat shield, a beam angle between 70 and 123 degrees, and a minimum light output of 900 lumens. Earthjustice and NRDC stated that DOE should either add these criteria to the text of the R20 short lamp definition or clarify in the preamble of this final rule that the requirement that an R20 short lamp be ''designed . . . specifically for pool and spa applications'' includes the satisfaction of these three criteria. (Earthjustice and NRDC, No. 15 at p. 1)

DOE agrees with Earthjustice and NRDC on the importance of the special characteristics of R20 short lamps and has stated in section III.C of this final rule that each of these characteristics is required for the R20 short lamp to provide the special application for which it was designed. DOE believes the definition for R20 short lamp added to 10 CFR 430.2, which specifies the wattage, MOL, and requires that the lamp must be designed, labeled, and marketed specifically for pool and spa applications, sufficiently identifies the lamps designated for exclusion.

V. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Today's regulatory action has been determined to not be a ''significant regulatory action'' under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) is not required to review this action.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281 (Jan. 21, 2011)). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, OIRA has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that today's final rule is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (RFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*).

DOE reviewed today's rulemaking under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. This rulemaking sets no standards; it only determines that exclusion from standards is warranted for R20 short lamps. DOE certifies that this rulemaking will not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows.

For manufacturers of R20 short lamps, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR part 121.The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*. R20 short lamp manufacturing is classified under NAICS 335110, ''Electric Lamp Bulb and Part Manufacturing.'' The SBA sets a threshold of 1,000 employees or less for an entity to be considered as a small business for this category. DOE identified two small business manufacturers of R20 short lamps.

Amendments to EPCA in EPAct 1992 established the current energy conservation standards for certain classes of IRLs. On July 14, 2009, DOE published a final rule in the **Federal Register** that amended these standards, with a compliance date of July 14, 2012. 74 FR 34080. In that rulemaking, DOE concluded that the standards would not have a substantial impact on small entities and, therefore, did not prepare a regulatory flexibility analysis. 74 FR at 34174–34175 (July 14, 2009). On the basis of the foregoing and because this rulemaking to establish an exclusion from standards decreases regulatory burden, DOE certifies that this rulemaking will have no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an RFA for this final rule. DOE transmitted the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This rulemaking, which establishes an exclusion from energy conservation standards for R20 short lamps, would impose no new information or record keeping requirements. Accordingly, the OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that this final rule fits within the category of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (Pub. L. 91–190, codified at 42 U.S.C. 4321 *et seq.*), and DOE's implementing regulations at 10 CFR part 1021. Specifically, the rulemaking amends an existing rule without changing its environmental effect, and, therefore, is covered by Categorical Exclusion (CX) A5 found in 10 CFR part 1021, subpart D, appendix A. Therefore, as DOE has made a CX determination for the rulemaking, DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement. DOE's CX determination is available at *http://cxnepa.energy.gov/*.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism.'' 64 FR 43255 (Aug. 10, 1999) imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For an amended regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under

UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/gc/office-general-counsel*.

DOE examined today's rulemaking according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year. Instead, the rule excludes R20 short lamps from standards, thereby eliminating any existing associated compliance costs. Accordingly, no further assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that today's regulatory action, which excludes R20 short lamps from energy conservation standards, is not a significant energy action because the exclusion from standards is not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on the final rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions. 70 FR 2667 (Jan. 14, 2005).

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following Web site: *www1.eere.energy.gov/buildings/appliance_standards/peer_review.html*.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, and Small businesses.

Issued in Washington, DC, on November 7, 2013.

David T. Danielson,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. In § 430.2, revise the definition for ''Incandescent reflector lamp'' and add the definition for ''R20 short lamp,'' in alphabetical order, to read as follows:

§ 430.2 Definitions.

* * * * *

Incandescent reflector lamp (commonly referred to as a reflector lamp) means any lamp in which light is produced by a filament heated to incandescence by an electric current, which: contains an inner reflective coating on the outer bulb to direct the light; is not colored; is not designed for rough or vibration service applications; is not an R20 short lamp; has an R, PAR, ER, BR, BPAR, or similar bulb shapes with an E26 medium screw base; has a rated voltage or voltage range that lies at least partially in the range of 115 and 130 volts; has a diameter that exceeds 2.25 inches; and has a rated wattage that is 40 watts or higher.

* * * * *

R20 short lamp means a lamp that is an R20 incandescent reflector lamp that has a rated wattage of 100 watts; has a maximum overall length of 3 and 5/8, or 3.625, inches; and is designed, labeled, and marketed specifically for pool and spa applications.

* * * * *

[FR Doc. 2013–27248 Filed 11–13–13; 8:45 am]

BILLING CODE 6450–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1024

RIN 3170–AA37

Homeownership Counseling Organizations Lists Interpretive Rule

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: This rule describes data instructions for lenders to use in complying with the requirement under the High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (RESPA Homeownership Counseling Amendments) Final Rule to provide a homeownership counseling list using data made available by the Bureau or Department of Housing and Urban Development (HUD).

DATES: This rule is effective January 10, 2014.

FOR FURTHER INFORMATION CONTACT: Rachel Ross, Special Assistant; Joseph Devlin, Counsel; Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

In January 2013, pursuant to the Dodd-Frank Act, Public Law 111–203, 124 Stat. 1375 (2010), the Bureau issued the High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (RESPA Homeownership Counseling Amendments) Final Rule (2013 HOEPA Final Rule).[1] The 2013 HOEPA Final Rule implemented numerous Dodd-Frank Act requirements. Section 1450 of the Dodd-Frank Act amended section 5(c) of the Real Estate Settlement Procedures Act (RESPA) to require lenders to provide federally related mortgage loan applicants with a ''reasonably complete or updated list of homeownership counselors who are certified pursuant to section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) and located in the area of the lender.'' [2] The RESPA Homeownership Counseling Amendments implements this section 1450 amendment in Regulation X § 1024.20(a).

In implementing this Dodd-Frank Act requirement, § 1024.20(a)(1) requires lenders to provide the loan applicant with a written list of homeownership counseling organizations that provide relevant services in the loan applicant's location. The Bureau specified two compliance methods for obtaining this list: (1) using a tool developed and maintained by the Bureau on its Web site, and (2) using data made available by the Bureau or HUD, provided that the data is used in accordance with instructions provided with the data.[3] The Bureau noted the use of the data in accordance with these instructions would produce a list consistent with what would have been generated if the tool had been used.[4] This rule interprets § 1024.20(a)(1) of the RESPA Homeownership Counseling Amendments, including describing those data instructions.

The Bureau's tool, as discussed in § 1024.20(a)(1)(i), follows these data instructions.

II. List and Data Instructions

This rule interprets the § 1024.20(a)(1) requirement for lenders to provide a list of homeownership organizations and to obtain the list from data made available by the Bureau or HUD, provided the data is used in accordance with instructions provided with the data.[5] This rule describes instructions for lenders to use in complying with the § 1024.20(a)(1)(ii) requirement to generate a list of homeownership counseling organizations by using data provided by the Bureau or HUD.

HUD currently provides this data. HUD maintains a free and publicly available application programming interface (API) containing data on HUD-approved housing counseling agencies (HUD API). Although it appears on this site that a token is required to utilize this data, credentials are not required to access and use the data. These data instructions are designed to be applied with publicly available homeownership counselor agency data from HUD,[6] as referenced in § 1024.20(a)(1)(ii). The Bureau will make a summary of the data instructions available on the Bureau's Web site, along with a link to the publicly available housing counseling agency data.

A. Number of Homeownership Counselors To Appear on List

Section 1024.20(a)(1) requires lenders to provide a written list of homeownership counseling organizations. Consistent with § 1024.20(a)(1), lenders comply with this requirement when they provide a list of ten HUD-approved housing counseling agencies. The tool maintained by the Bureau will generate a list of ten HUD-approved housing counseling agencies. A list generated by the lender under § 1024.20(a)(1)(ii) complies with § 1024.20(a)(1) when the same number of counseling agencies (ten) are provided. Listing ten housing counseling agencies ensures fairness and equity among housing counseling agencies, by offering borrowers a thorough and diverse list of counseling options.

B. Location by Zip Code

Section 1024.20(a)(1) requires lenders to provide a written list of homeownership counseling organizations in the loan applicant's location. As the Bureau discussed in the RESPA Homeownership Counseling Amendments, lenders comply with § 1024.20(a)(1), when they use the

[1] 78 FR 6855 (Jan. 31, 2013).

[2] Section 106(e) of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701x(e), requires that homeownership counseling provided under programs administered by HUD can be provided only by organizations or individuals certified by HUD as competent to provide homeownership counseling. Section 106(e) also requires HUD to establish standards and procedures for testing and certifying counselors.

[3] These two pathways are specified in § 1024.20(a)(1)(i) and (ii), respectively.

[4] 78 FR 6865 (Jan. 31, 2013).

[5] RESPA and § 1024.20(a)(1) refer to counseling entities as Homeownership Counseling Organizations. HUD refers to them as HUD-approved Housing Counseling Agencies. Homeownership Counseling Organizations as referred to in § 1024.20(a)(1) and this rule are considered HUD-approved Housing Counseling Agencies.

[6] Available at: *http://data.hud.gov/housing_counseling.html.*

borrower's five-digit zip code to generate a list of the ten closest HUD-approved housing counseling agencies to the centroid of the zip code of the borrower's current address, in descending order of proximity to the centroid. The borrower's current zip code satisfies the requirement that the homeownership counseling organizations be in the loan applicant's location. The zip code of the borrower's current address is the default to be entered for list generation. Lenders, should they choose, may offer borrowers the option of generating the list from a zip code different than their home address, or from a more precise geographic marker such as a street address, but lenders are not required to offer such an option. The Bureau's tool will permit generating the list of HUD-approved housing counseling agencies through entry of zip code. A list generated by the lender pursuant to § 1024.20(a)(1)(ii) complies with § 1024.20(a)(1) when the lender generates the list through entry of zip code or from a more precise geographic marker such as a street address. Lenders generating a list pursuant to § 1024.20(a)(1)(ii) through zip code or from a more precise geographic marker such as a street address, will ensure that lists generated under this provision are obtained through similar means as those generated through the Bureau's tool, thus ensuring consistency.

C. Homeownership Counselor Contact Information

Section 1024.20(a)(1) requires lenders to provide a written list of homeownership counseling organizations that provide relevant services in the loan applicant's location. Consistent with § 1024.20(a)(1), lenders comply when they provide the following data fields for each housing counseling agency on the list to the extent that they are available through the HUD API: Agency name, phone number, street address, street address continued, city, state, zip code, Web site URL, email address, counseling services provided, and languages spoken. Providing a street address is preferable to providing a mailing address, as available. The tool maintained by the Bureau will provide these data fields to the extent that they are available through the HUD API. A list generated by the lender under § 1024.20(a)(1)(ii) complies with § 1024.20(a)(1) when these data fields are provided to the extent that they are available through the HUD API. The table below describes how the HUD API data fields relate to the above required data fields:

Data element required for list for each agency	HUD API Field name	HUD Field definition	Example
Agency name	nme	Agency name	"Local Counseling Agency".
Phone number	phone1	Phone number	"555–555–5555".
Street address	adr1	Street Address	"1234 Main Street".
Street address continued	adr2	Street Address continued.	
City	city	City	"Anytown".
State	statecd	Code for state in which agency is located.	"PA".
Zip code	zipcd	Zip Code	"12345".
Website URL	weburl	Agency Web Site address	"*http://www.counselor.org*".
Email address	email	Email address	"counselor@counselor.org".
Counseling services provided	Services	Types of Counseling Services available.	"DFC,FBC,FHW,HIC,HMC,NDW,PLW, PPC,PPW,RHC" [7].
Languages spoken	languages	The languages in which agency provides services.	"ENG".

Data fields which are populated with codes that are not commonly understood by borrowers should be translated into their definitional meanings, according to the Data Dictionary,[7] to ensure clarity. This will be relevant for the data fields entitled ''Counseling services provided'' and ''Languages spoken.''

D. Accompanying Information

Lenders comply with § 1024.20(a)(1) when the following language is included: ''The counseling agencies on this list are approved by the U.S. Department of Housing and Urban Development (HUD), and they can offer independent advice about whether a particular set of mortgage loan terms is a good fit based on your objectives and circumstances, often at little or no cost to you. This list shows you several approved agencies in your area. You can find other approved counseling agencies at the Consumer Financial Protection Bureau's (CFPB) Web site: *consumerfinance.gov/mortgagehelp* or by calling 1–855–411–CFPB (2372). You can also access a list of nationwide HUD-approved counseling intermediaries at *http://portal.hud.gov/hudportal/HUD?src=/ohc_nint.*''

Including information about where borrowers can gain additional information is consistent with the Bureau's preamble discussion of how it envisioned implementing the § 1024.20(a)(1) list requirement in the RESPA Homeownership Counseling Amendments.[8] Giving borrowers the link to HUD-approved national counseling intermediaries offers borrowers additional housing counseling options, as national intermediaries offer phone counseling and online counseling services, which are particularly useful to borrowers in remote areas or areas less-dense with counseling agencies. The Bureau's tool will generate lists under § 1024.20(a)(1)(i) that include this text above. By including this information, lenders generating lists under § 1024.20(a)(1)(ii) will comply with § 1024.20(a)(1). This will ensure that information provided under this provision is consistent with information accompanying lists generated by the Bureau's Web site, thus ensuring consistency.

III. Regulatory Requirements

This rule articulates the Bureau's interpretations of the RESPA Homeownership Counseling Amendments. It is therefore exempt from the APA's notice and comment rulemaking requirements pursuant to 5 U.S.C. 553(b).

[7] A data dictionary for the Field ''Services'' can be found at *http://data.hud.gov/Housing_Counselor/getServices,* and a data dictionary for ''Languages'' can be found at *http://data.hud.gov/Housing_Counselor/getLanguages.*

[8] See 78 FR 6855 (Jan. 31, 2013) (''The Bureau anticipates the lists generated through its tool will also include information enabling the consumer to access the Bureau or HUD list of homeownership counseling organizations, so that an applicant who receives the list can obtain information about additional counseling organizations if desired.'').

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a).

The Bureau has determined that the Rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The requirement for lenders to provide the loan applicant with a written list of homeownership counseling organizations in the loan applicant's location is currently approved by OMB and assigned the OMB control number 3170–0025. Generally, the collections of information contained in Regulation X are assigned the OMB control number 3170–0016, and the collections of information contained in Regulation Z are assigned the OMB control number 3170–0015.

Dated: November 7, 2013.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2013–27300 Filed 11–13–13; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0871; Directorate Identifier 2013–NM–187–AD; Amendment 39–17658; AD 2013–23–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes. This AD requires inspecting to determine the part number of the inboard actuator attach fittings of the outboard flap. For affected attach fittings, this AD requires doing a detailed inspection of the attach fittings for a cylindrical defect and replacing if necessary. As an option to the detailed inspection, this AD allows replacement of affected attach fittings. This AD was prompted by a report of the fracture of an inboard actuator attach fitting of the outboard flap. An inspection of the attach fitting revealed that it was incorrectly machined with a cylindrical profile instead of a conical profile, resulting in reduced wall thickness. We are issuing this AD to detect and correct defective inboard actuator attach fittings which, combined with loss of the outboard actuator load path, could result in uncontrolled retraction of the outboard flap, damage to flight control systems, and consequent reduced controllability of the airplane.

DATES: This AD is effective November 29, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 29, 2013.

We must receive comments on this AD by December 30, 2013.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *nathan.p.weigand@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We received a report a report of the fracture of a No. 7 inboard actuator attach fitting of the outboard flap. It was determined that the fracture occurred in the internal conical machined area. Investigation revealed that a portion of the interior surface was machined with a cylindrical profile instead of a conical profile. This resulted in reduced wall thickness and subsequent fracture; the thickness of the fitting was approximately half the designed wall thickness. We also received reports of other attach fittings with a cylindrical defect with reduced wall thickness. This condition combined with loss of the outboard actuator load path, if not corrected, could result in uncontrolled retraction of the outboard flap and subsequent damage to flight control systems at the rear spar, and consequent reduced controllability of the airplane.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 747–57A2343, dated September 12, 2013. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov.*

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires inspecting to determine the part number of the inboard actuator attach fittings of the outboard flap. For affected attach fittings, this AD requires doing a detailed inspection of the attach fittings for a cylindrical defect and replacing if necessary. As an option to the detailed inspection, this AD allows replacement of the affected attach fittings.

The FAA worked in conjunction with industry, under the Airworthiness Directives Implementation Aviation Rulemaking Committee, to enhance the

AD system. One enhancement was a new process for annotating which steps in the service information are required for compliance with an AD. Differentiating these steps from other tasks in the service information is expected to improve an owner's/operator's understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The actions specified in the service information described previously include steps that are labeled as RC (required for compliance) because these steps have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

As noted in the specified service information, steps labeled as RC must be done to comply with the AD. However, steps that are not labeled as RC are recommended. Those steps that are not labeled as RC may be deviated from, done as part of other actions, or done using accepted methods different from those identified in the service information without obtaining approval of an alternative method of compliance (AMOC), provided the steps labeled as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps labeled as RC will require approval of an AMOC.

Interim Action

We consider this AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

We are also considering further rulemaking to require a minimum thickness inspection of inboard actuator attach fittings that are conically machined. However, the planned compliance time for the minimum thickness inspection would allow enough time to provide notice and opportunity for prior public comment on the merits of that inspection. This AD only addresses the unsafe condition associated with inboard actuator attach fittings of the outboard flap that have a cylindrical defect.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because defective actuator attach fittings, combined with loss of the outboard actuator load path, could result in uncontrolled retraction of the outboard flap, damage to flight control systems, and consequent reduced controllability of the airplane. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2013–0871 and Directorate Identifier 2013–NM–187–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 184 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection for part number	7 work-hour × $85 per hour = $595	$0	$595	$109,480

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2013–23–03 The Boeing Company: Amendment 39–17658; Docket No. FAA–2013–0871; Directorate Identifier 2013–NM–187–AD.

(a) Effective Date

This AD is effective November 29, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–57A2343, dated September 12, 2013.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report of the fracture of an inboard actuator attach fitting of the outboard flap. An inspection of the attach fitting revealed that it was incorrectly machined with a cylindrical profile instead of a conical profile, resulting in reduced wall thickness. We are issuing this AD to detect and correct defective inboard actuator attach fittings which, combined with loss of the outboard actuator load path, could result in uncontrolled retraction of the outboard flap, damage to flight control systems, and consequent reduced controllability of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Part Number Inspection

Within 90 days after the effective date of this AD: Inspect to determine the part number of the inboard actuator attach fittings of the outboard flaps, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2343, dated September 12, 2013.

(h) Actions for Certain Attach Fittings

If, during the inspection required by paragraph (g) of this AD, any inboard actuator attach fitting having part number (P/N) 65B08564–7 is found, before further flight, do the actions specified in paragraph (h)(1) or (h)(2) of this AD.

(1) Do a detailed inspection of the inboard actuator attach fitting for a cylindrical defect, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2343, dated September 12, 2013. If any cylindrical defect is found, before further flight, do the actions specified in paragraph (h)(1)(i) or (h)(1)(ii) of this AD.

(i) Do a minimum thickness inspection of the inboard actuator attach fitting to determine minimum wall thickness of the actuator fitting assembly, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2343, dated September 12, 2013. If the minimum thickness of the wall is less than 0.130 inch: Before further flight, replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747 57A2343, dated September 12, 2013.

(ii) Replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2343, dated September 12, 2013.

(2) Replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2343, dated September 12, 2013.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) If the service information contains steps that are labeled as RC (Required for Compliance), those steps must be done to comply with this AD; any steps that are not labeled as RC are recommended. Those steps that are not labeled as RC may be deviated from, done as part of other actions, or done using accepted methods different from those identified in the specified service information without obtaining approval of an AMOC, provided the steps labeled as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps labeled as RC require approval of an AMOC.

(j) Related Information

For more information about this AD, contact Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *nathan.p.weigand@faa.gov.*

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Service Bulletin 747–57A2343, dated September 12, 2013.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(4) You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on October 31, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–27015 Filed 11–13–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0329; Directorate Identifier 2012–NM–032–AD; Amendment 39–17596; AD 2013–19–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directives (ADs) 2009–04–07 and 2011–02–09 for certain

Airbus Model A330–200, A330–200 Freighter, A300–300, A340–200, A340–300, A340–500, and A340–600 series airplanes. AD 2009–04–07 required revising the airplane flight manual (AFM) to include appropriate operational procedures to prevent the air data inertial reference unit (ADIRU) from providing erroneous data to other airplane systems. AD 2011–02–09 required revising the AFM to provide appropriate operational procedures to prevent the airplane flight directors (FDs), autopilot (AP), and auto-thrust re-engagement in the event of airspeed sources providing similar but erroneous data. This new AD requires that operators modify or replace all three flight control primary computers (FCPCs) with new software standards. Since we issued ADs 2009–04–07 and 2011–02–09, we have determined that new software standards for the FCPCs are necessary to inhibit autopilot re-engagement under unreliable airspeed conditions. This new AD also removes certain airplanes from the applicability. We are issuing this AD to prevent autopilot engagement under unreliable airspeed conditions, which could result in reduced controllability of the airplane.

DATES: This AD becomes effective December 19, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 19, 2013.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of February 9, 2011 (76 FR 4219, January 25, 2011).

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of March 5, 2009 (74 FR 7549, February 18, 2009).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on April 16, 2013 (78 FR 22432), and proposed to supersede AD 2009–04–07, Amendment 39–15813 (74 FR 7549, February 18, 2009); and AD 2011–02–09, Amendment 39–16583 (76 FR 4219, January 25, 2011). The NPRM proposed to correct an unsafe condition for the specified products.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2011–0199R1, dated February 17, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

It has been determined that, when there are significant differences between all airspeed sources, the flight controls of an Airbus A330 or A340 aeroplane will revert to alternate law, the autopilot (AP) and the auto-thrust (A/THR) automatically disconnect, and the Flight Directors (FD) bars are automatically removed.

Further analyses have shown that, after such an event, if two airspeed sources become similar while still erroneous, the flight guidance computers will display the FD bars again, and enable the re-engagement of AP and A/THR. However, in some cases, the AP orders may be inappropriate, such as possible abrupt pitch command.

In order to prevent such events which may, under specified circumstances, constitute an unsafe condition, EASA issued AD 2010–0271 [*http://ad.easa.europa.eu/ad/2010-0271*] [which corresponds to FAA AD 2011–02–09, Amendment 39–16583 (76 FR 4219, January 25, 2011)] to require an amendment of the Flight Manual to ensure that flight crews apply the appropriate operational procedure.

Since that [EASA] AD was issued, new FCPC software standards have been developed that will inhibit autopilot engagement under unreliable airspeed conditions.

Consequently, EASA issued AD 2011–0199 to require software standard upgrade of the three FCPCs by either modification or replacement, as follows:

—Software standard P11A/M20A on FCPC 2K2 hardware for A330–200/–300 aeroplanes [with electrical rudder], through Airbus Service Bulletin (SB) A330–27–3176,
—software standard P12A/M21A on FCPC 2K1 hardware and M21A on FCPC 2K0 hardware for A330–200/–300 aeroplanes [with mechanical rudder], through Airbus SB A330–27–3177,
—software standard L22A on FCPC 2K1 hardware and L22A on FCPC 2K0 hardware for A340–200/–300 aeroplanes [with mechanical rudder], through Airbus SB A340–27–4174, and
— software standard L21A on FCPC 2K2 hardware for A340–300 aeroplanes [with electrical rudder], through Airbus SB A340–27–4162.

*   *   *   *   *

EASA has also issued MCAI 2013–0107, dated May 17, 2013, which states:

An A330 aeroplane experienced a sudden nose down movement while in cruise. This event was preceded by an automatic autopilot disconnection, which triggered the ''NAV IR1 FAULT'' Electronic Centralised Aircraft Monitor (ECAM) Caution. Investigation results highlighted that at the time of the event, the Air Data Reference 1 (ADR) part of ADIRU1 was providing erroneous and temporary wrong parameters in a random manner. This abnormal behavior of the ADR1 led to several consequences such as unjustified stall and over speed warnings, loss of attitude information on Captain Primary Flight Display (PFD) and several ECAM warnings. Among the abnormal parameters, the provided Angle of Attack (AoA) value was such that the flight control computers commanded the sudden nose down movement.

Further investigation results concluded that this event was caused by erroneous and undetected AoA values (spikes) generated by the ADIRU1.

This condition, if not corrected, could lead to further similar occurrences, possibly resulting in loss of control of the aeroplane.

To address this potential unsafe condition and as an interim solution, EASA issued Emergency AD 2009–0012–E [*http://ad.easa.europa.eu/ad/2009-0012-E*] to require implementation of an aircraft Flight Manual (AFM) operational procedure, to isolate both the Inertial Reference (IR) and ADR in case a faulty IR is detected.

Since that [EASA] AD was issued, a final fix solution was developed, consisting of new FCPC software standards, which prevents the potential unsafe condition and cancels the AFM operational procedure required by EASA AD 2009–0012–E. Consequently, EASA issued AD 2011–0199R1 to require this software standard upgrade of the three FCPCs by either modification or replacement, for A330 and A340–200/–300 aeroplanes.

Due to similar design, Airbus A340–500/–600 aeroplanes are also impacted by this issue, and Airbus developed Service Bulletin (SB) A340–27–5051 which gives instructions for a software standard upgrade of the three FCPCs, irrespective of ADIRU manufacturer.

For the reasons described above, this AD requires a software standard upgrade of the three FCPCs for A340–500/–600 aeroplanes, which cancels the operational procedure imposed by EASA AD 2009–0012–E.

You may obtain further information by examining the MCAI in the AD docket on the Internet at *http://www.regulations.gov/*

#!documentDetail;D=FAA-2013-0329-0003.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Support for the NPRM (78 FR 22432, April 16, 2013)

The Air Line Pilots Association International supported the intent of the NPRM (78 FR 22432, April 16, 2013).

Michael Carrera agreed with the requirements of the NPRM (78 FR 22432, April 16, 2013).

Request To Include EASA AD 2013–0107, Dated May 17, 2013, in the NPRM (78 FR 22432, April 16, 2013)

Airbus stated that EASA has issued AD 2013–0107, issued May 17, 2013, and requested that we include the equivalent actions in this AD. Airbus stated that the requirements of EASA AD 2013–0107 are for Model A340–500 and –600 airplanes and are equivalent to the requirements of this AD for Model A330 and A340–200 and –300 airplanes. Airbus stated that the actions required by EASA AD 2013–0107 enables a supersedure action required by FAA AD 2009–04–07, Amendment 39–15813 (74 FR 7549, February 18, 2009). Airbus also stated that for Model A340–541 and A340–642 airplanes, the actions required by EASA AD 2013–0107 terminate the requirements of paragraph (g) of the NPRM (78 FR 22432, April 16, 2013) and AD 2009–04–07.

We agree that EASA AD 2013–0107 mandates similar actions for Model A340–541 and A340–642 airplanes and eliminates the same revisions of the AFM as mandated by FAA AD 2009–04–07, Amendment 39–15813 (74 FR 7549, February 18, 2009). Although there are no Model A340–541 or A340–642 airplanes currently registered in the U.S., we have included the requirements of EASA AD 2013–0107 (which specifies to modify or replace certain FCPCs in accordance with Airbus Service Bulletin A340–27–5051) in this final rule, and have added Model A340–541 and A340–642 airplanes to paragraph (c)(2) of this final rule. We have also added new paragraph (j) to this final rule to include actions specified in Airbus Mandatory Service Bulletin A340–27–5051, dated July 16, 2012, for Model A340–541 and A340–642 series airplanes. Subsequent paragraphs have been redesignated accordingly. In addition, we have clarified paragraphs (i)(3) and (i)(4) of this final rule to state that the actions specified in paragraphs (i)(3) and (i)(4) of this final rule apply to Model A340–200 and –300 series airplanes.

Request To Include the Equivalent Mandatory Actions of EASA AD 2012–0271, Dated December 21, 2012, in the NPRM (78 FR 22432, April 16, 2013)

Airbus stated that EASA has issued AD 2012–0271, dated December 21, 2012, on the same subject and requested that the equivalent mandatory actions be included in this AD. EASA AD 2012–0271 requires installation of the FCPC multi role transport tanker (MRTT2) standard applicable to Model A330 airplanes on which Airbus Service Bulletin A330–27–3156 has been embodied. Airbus stated that this requirement for Model A330 MRTT airplanes is equivalent to one in the NPRM (78 FR 22432, April 16, 2013) for other Model A330 airplanes. The commenter stated that this action enables the supersedure of the actions required by FAA AD 2009–04–07, Amendment 39–15813 (74 FR 7549, February 18, 2009); and AD 2011–02–09, Amendment 39–16583 (76 FR 4219, January 25, 2011); and terminates the requirements of paragraphs (g) and (h) of the NPRM (78 FR 22432, April 16, 2013).

We disagree with including the requested actions in this final rule. EASA AD 2012–0271, issued December 21, 2012, requires modification or replacement of the three FCPCs to install software standard MRTT2 on Model A330–200 airplanes with commercial designation MRTT. We have not type-validated Model A330–200 MRTT airplanes and that model is not on the FAA type certificate data sheet. We have not taken actions in regard to EASA AD 2012–0271 related to Model A330–200 MRTT airplanes for that reason. No change has been made to this final rule in this regard.

Request To Update AFM Temporary Revision (TR) References

Airbus requested that we update the references for the AFM TRs. Airbus stated that the references for the AFM TRs have been changed.

We disagree with changing the references for the AFM TRs in this final rule. The new designation of the AFM TRs was introduced after the publication of AD 2009–04–07, Amendment 39–15813 (74 FR 7549, February 18, 2009). Changing the references could cause misunderstanding or confusion. No change has been made to this final rule in this regard.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 22432, April 16, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 22432, April 16, 2013).

Related AD

Accomplishing the actions specified in paragraphs (i)(1) through (i)(4) of this final rule is compliant with the optional actions specified in paragraphs (l) and (o)(1) through (o)(4) of AD 2013–05–08, Amendment 39–17380 (78 FR 27015, May 9, 2013).

Costs of Compliance

We estimate that this AD affects about 59 products of U.S. registry.

The actions that are required by AD 2009–04–07, Amendment 39–15813 (74 FR 7549, February 18, 2009), and retained in this AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the actions that were required by AD 2009–04–07 is $85 per product.

The actions that are required by AD 2011–02–09, Amendment 39–16583 (76 FR 4219, January 25, 2011), and retained in this AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the actions currently required by AD 2011–02–09 is $85 per product.

We estimate that it takes about 5 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD on U.S. operators to be $25,075, or $425 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0329;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the MCAI, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ (a) Removing airworthiness directive (AD) 2009–04–07, Amendment 39–15813 (74 FR 7549, February 18, 2009), and AD 2011–02–09, Amendment 39–16583 (76 FR 4219, January 25, 2011); and

■ (b) Adding the following new AD:

2013–19–14 Airbus: Amendment 39–17596. Docket No. FAA–2013–0329; Directorate Identifier 2012–NM–032–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective December 19, 2013.

(b) Affected ADs

This AD supersedes AD 2009–04–07, Amendment 39–15813 (74 FR 7549, February 18, 2009); and AD 2011–02–09, Amendment 39–16583 (76 FR 4219, January 25, 2011).

(c) Applicability

This AD applies to the Airbus airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model A330–223F, –243F, –201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; except those on which Airbus Modification 201654 has been embodied in production, or Airbus Service Bulletin A330–27–3156 has been incorporated in service.

(2) All Model A340–211, –212, –213, –311, –312, –313, –541, and 642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by the possibility that, due to significant differences among all airspeed sources, the flight controls will revert to alternate law, the autopilot (AP) and the auto-thrust (A/THR) automatically disconnect, and the flight director (FD) bars are automatically removed. Then, if two airspeed sources become similar while still erroneous, the flight guidance computers will display the FD bars again, and enable the re-engagement of the AP and A/THR. In some cases, however, the AP orders may be inappropriate, such as possible abrupt pitch command. We are issuing this AD to prevent autopilot engagement under unreliable airspeed conditions, which could result in reduced controllability of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Retained Airplane Flight Manual (AFM) Revision: Certain NAV Faults or ATT Flag on PFD

This paragraph restates the actions required by paragraph (f) of AD 2009–04–07, Amendment 39–15813 (74 FR 7549, February 18, 2009). For all airplanes except Model A330–223F and –243F airplanes: Within 14 days after March 5, 2009 (the effective date of AD 2009–04–07), revise the applicable section of the A330 or A340 (Airbus) Flight Manual (FM) by inserting a copy of A330 (Airbus) Temporary Revision (TR) 4.02.00/46, or A340 (Airbus) TR 4.02.00/54, both Issue 3, both dated January 13, 2009, as applicable. Thereafter, operate the airplane according to the limitations and procedures in the TRs. When information identical to that in the TR has been included in the general revisions of the FM, the general revisions may be inserted in the FM, and the TR may be removed.

(h) Retained AFM Revision: Alternate Law Associated With AP and A/THR Disconnection

This paragraph restates the actions required by paragraph (g) of AD 2011–02–09, Amendment 39–16583 (76 FR 4219, January 25, 2011). Within 15 days after February 9, 2011 (the effective date of AD 2011–02–09), do the actions in paragraph (h)(1) or (h)(2) of this AD.

(1) Revise the Limitations and Abnormal Sections of the Airbus A330/A340 AFM to include the following statement and operate the airplane according to these limitations and procedures. This may be done by inserting a copy of this AD in the AFM. When a statement identical to that in figure 1 to paragraph (h)(1) of this AD has been included in the general revisions of the Limitations and Abnormal Sections of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

BILLING CODE 4910–13–P

Figure 1 to Paragraph (h)(1) of this AD: *Procedure*

PROCEDURE:

When autopilot and auto-thrust are automatically disconnected and flight controls have reverted to alternate law:

- Do not engage the AP and the A/THR, even if FD bars have reappeared

- Do not follow the FD orders

- ALL SPEED INDICATIONSX-CHECK

• If unreliable speed indication is suspected:

- UNRELIABLE SPEED INDIC/ADR CHECK PROC APPLY

• If at least two ADRs provide reliable speed indication for at least 30 seconds, and the aircraft is stabilised on the intended path:

AP/FD and A/THR As required

BILLING CODE 4910–13–C

(2) Revise the Limitations and Abnormal Sections of the Airbus A330/A340 AFM to include the information in Airbus A330/A340 TR TR149 (for Model A330 airplanes) or TR TR150 (for Model A340–200 and -300 series airplanes), both Issue 1.0, both dated December 20, 2010. These TRs introduce procedures for operation of the auto pilot and auto-thrust disconnect. Operate the airplane according to the limitations and procedures in the TRs. This may be done by inserting copies of Airbus A330/A340 TR TR149 or TR150, both Issue 1.0, both dated December 20, 2010; as applicable; into the Airbus A330/A340 AFM. When these TRs have been included in general revisions of the AFM, the general revisions may be inserted in the AFM, and the TRs may be removed.

(i) New Software Standard Upgrade for Model A330 Series Airplanes, and Model A340–200 and –300 Series Airplanes

Within 10 months after the effective date of this AD, upgrade (by modification or replacement, as applicable) the three flight control primary computers (FCPCs), as specified in paragraphs (i)(1), (i)(2), (i)(3), and (i)(4) of this AD, as applicable. Accomplishment of the applicable requirements of this paragraph terminates the requirements of paragraphs (g) and (h) of this AD. Accomplishing the actions specified in paragraphs (i)(1) through (i)(4) of this AD are compliant with the optional actions specified in paragraphs (l) and (o)(1) through (o)(4) of AD 2013–05–08, Amendment 39–17380 (78 FR 27015, May 9, 2013).

(1) For Model A330 series airplanes: Upgrade to software standard P11A/M20A on FCPC 2K2 hardware, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27–3176, Revision 02, dated April 24, 2012.

(2) For Model A330 series airplanes: Upgrade to software standard P12A/M21A on FCPC 2K1 hardware, and software standard M21A on FCPC 2K0 hardware, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27–3177, dated December 21, 2011.

(3) For Model A340–200 and –300 series airplanes: Upgrade to software standard L22A on FCPC 2K1 hardware, and software standard L22A on FCPC 2K0 hardware, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–27–4174, dated November 21, 2011.

(4) For Model A340–200 and –300 series airplanes: Upgrade to software standard L21A on FCPC 2K2 hardware, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–27–4162, Revision 01, dated September 17, 2012.

(j) New Software Standard Upgrade for Model A340–541 and –642 Series Airplanes

(1) Within 10 months after the effective date of this AD, modify or replace the three FCPCs to integrate software standard W12 on FCPC 2K2 hardware, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–27–5051, dated July 16, 2012. Accomplishment of the applicable requirements of this paragraph terminates the requirements of paragraphs (g) and (h) of this AD.

(2) After accomplishing the modification in accordance with paragraph (j)(1) of this AD, do not install an FCPC on the airplane unless the FCPC is 2K2 hardware with integrating software standard W12.

(k) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraph (i)(1) of this AD, if those actions were performed before the effective date of this AD using Airbus Mandatory Service Bulletin A330–27–3176, dated July 26, 2011; or Airbus Mandatory Service Bulletin A330–27–3176, Revision 01, dated March 27, 2012; which are not incorporated by reference in this AD.

(2) This paragraph provides credit for the actions specified in paragraph (i)(4) of this AD, if those actions were performed before the effective date of this AD using Airbus

Mandatory Service Bulletin A340–27–4162, dated January 10, 2012, which is not incorporated by reference in this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directives 2011–0199R1, dated February 17, 2012; and 2013–0107, dated May 17, 2013; for related information. The MCAI can be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA–2013–0329–0003.*

(2) Service information that is referenced in this AD that is not incorporated by reference in this AD may be viewed at the addresses identified in paragraphs (n)(6) and (n)(7) of this AD.

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on December 19, 2013.

(i) Airbus Mandatory Service Bulletin A330–27–3176, Revision 02, dated April 24, 2012.

(ii) Airbus Mandatory Service Bulletin A330–27–3177, dated December 21, 2011.

(iii) Airbus Mandatory Service Bulletin A340–27–4162, Revision 01, dated September 17, 2012.

(iv) Airbus Mandatory Service Bulletin A340–27–4174, dated November 21, 2011.

(v) Airbus Mandatory Service Bulletin A340–27–5051, dated July 16, 2012.

(4) The following service information was approved for IBR on February 9, 2011 (76 FR 4219, January 25, 2011).

(i) Airbus A330/A340 Temporary Revision TR149, Issue 1.0, dated December 20, 2010, to the Airbus A330/A340 Airplane Flight Manual.

(ii) Airbus A330/A340 Temporary Revision TR150, Issue 1.0, dated December 20, 2010, to the Airbus A330/A340 Airplane Flight Manual.

(5) The following service information was approved for IBR on March 5, 2009 (74 FR 7549, February 18, 2009).

(i) Airbus A330 Temporary Revision 4.02.00/46, Issue 3, dated January 13, 2009, to the Airbus A330 Airplane Flight Manual.

(ii) Airbus A340 Temporary Revision 4.02.00/54, Issue 3, dated January 13, 2009, to the Airbus A340 Airplane Flight Manual.

(6) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.*

(7) You may view copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(8) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on September 13, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–26565 Filed 11–13–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0212; Directorate Identifier 2012–NM–116–AD; Amendment 39–17509; AD 2013–14–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A330–223F, –223, –321, –322, and –323 airplanes. This AD was prompted by fatigue load analysis that determined that the inspection interval for certain pylon bolts must be reduced. This AD requires a torque check of forward engine mount bolts, and replacement if necessary. We are issuing this AD to detect and correct loose or broken bolts, which could lead to engine detachment in-flight, and damage to the airplane.

DATES: This AD becomes effective December 19, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 19, 2013.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.*

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on March 28, 2013 (78 FR 18925). The NPRM proposed to correct an unsafe condition for the specified products.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0094, dated May 31, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> The forward mount engine pylon bolts, Part Number (P/N) 51U615, fitted on Airbus A330 aeroplanes with Pratt & Whitney (PW)

PW4000 engines, are made from MP159 material.

The U.S. Federal Aviation Administration (FAA), as Engine Certification Authority, issued AD 2006–16–05 [Amendment 39–14705 (71 FR 44185, August 4, 2006)] to require (paragraph (g) of that AD) repetitive torque checks of MP159 material forward mount pylon bolts fitted on certain PW4000 series engines.

However, the engine mount system is considered to be part of aeroplane certification rather than the engine certification. Following further fatigue load analysis by Airbus of the A330 engine mount system, completed in February 2011 for both the freighter and passenger models of A330 aeroplanes, it was determined that MP159 material forward mount pylon bolts inspection interval must be reduced.

This condition, if not detected and corrected, could ultimately lead to engine detachment from the aeroplane, possibly resulting in damage to the aeroplane and/or injury to person on the ground.

For the reasons described above, this [EASA] AD requires accomplishment of repetitive torque checks of the forward mount pylon bolts installed on A330 aeroplanes powered by PW4000 engines and, depending on findings, the replacement of all four bolts and associated nuts.

Findings (discrepancies) include loose or broken bolts. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0212-0002*.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 18925, March 28, 2013) or on the determination of the cost to the public.

Additional Changes Made to This AD

We have combined tables 1, 2, and 3 to paragraph (g) of the NPRM (78 FR 18925, March 28, 2013) into one table, designated as table 1 to paragraph (g) in this final rule, and updated table references in this AD accordingly. These changes do not affect the requirements or intent of paragraph (g) of this AD.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD with the changes described previously—except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 18925, March 28, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 18925, March 28, 2013).

Costs of Compliance

We estimate that this AD will affect 41 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $6,970, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 1 work-hour and require parts costing $6,747, for a cost of $6,832 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA–2013-0212;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2013–14–04 Airbus: Amendment 39–17509. Docket No. FAA–2013–0212; Directorate Identifier 2012–NM–116–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective December 19, 2013.

(b) Affected ADs

This AD affects AD 2006–16–05, Amendment 39–14705 (71 FR 44185, August 4, 2006).

(c) Applicability

This AD applies to Airbus Model A330–223F, –223, –321, –322, and –323 airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Reason

This AD was prompted by fatigue load analysis that determined that certain pylon bolts inspection interval must be reduced. We are issuing this AD to detect and correct loose or broken bolts, which could lead to engine detachment in-flight, and damage to the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Torque Check and Replacement

(1) Within the compliance times specified in table 1 to paragraph (g) of this AD, as applicable to airplane model and utilization, do a torque check to determine if there are any loose or broken forward engine mount bolts (4 positions/engine) on both engines, and repeat that torque check at intervals not to exceed the values defined in table 1 to paragraph (g) of this AD, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–71–3028, Revision 01, dated February 20, 2012. For the purposes of table 1 to paragraph (g) of this AD, the average flight time (AFT) is defined as a computation of the number of flight hours divided by the number of flight cycles accumulated since last torque check or since the airplane's first flight, as applicable.

TABLE 1 TO PARAGRAPH (g) OF THIS AD

Airplane models	Flight cycles accumulated on the effective date of this AD since last torque check performed as specified in Pratt & Whitney Alert Service Bulletin PW4G–100–A71–32, or since airplane first flight, as applicable	Compliance time	Torque check interval (not to exceed)
For Model A330–223,–321, –322, and –323 airplanes with AFT more than 132 minutes.	0–1,850	Within 2,350 flight cycles since the last torque check as specified in Pratt & Whitney Alert Service Bulletin PW4G–100–A71–32, or since airplane first flight, as applicable.	2,350 flight cycles or 24,320 flight hours, whichever occurs first.
For Model A330–223, –321, –322, and –323 airplanes with AFT more than 132 minutes.	1,851–2,700	Within 500 flight cycles after the effective date of this AD without exceeding 2,700 flight cycles since last torque check as specified in Pratt & Whitney Alert Service Bulletin PW4G–100–A71–32, or since airplane first flight, as applicable; or within 3 months after the effective date of this AD; whichever occurs later.	2,350 flight cycles or 24,320 flight hours, whichever occurs first.
For Model A330–321,–322, and –323 airplanes with AFT equal or less than 132 minutes; and for Model A330–321, –322, and –323 airplanes on which the AFT is not calculated on a regular basis.	0–1,450	Within 1,950 flight cycles since the last torque check performed as specified in Pratt & Whitney Alert Service Bulletin PW4G–100–A71–32, or since airplane first flight, as applicable.	1,950 flight cycles or 20,210 flight hours, whichever occurs first.
For Model A330–321, –322, and –323 airplanes with AFT equal or less than 132 minutes; and for Model A330–321,–322, and –323 airplanes on which the AFT is not calculated on a regular basis.	1,451–2,700	Within 500 flight cycles after the effective date of this AD without exceeding 2,700 flight cycles since last torque check performed as specified in Pratt & Whitney Alert Service Bulletin PW4G–100–A71–32, or since airplane first flight, as applicable; or within 3 months after the effective date of this AD; whichever occurs later.	1,950 flight cycles or 20,210 flight hours, whichever occurs first.
For Model A330–223F airplanes.	Not applicable	Within 2,140 flight cycles or 6,600 flight hours, whichever occurs first since the last torque check performed as specified in Pratt & Whitney Alert Service Bulletin PW4G–100–A71–32, or since airplane first flight, as applicable.	2,140 flight cycles or 6,600 flight hours, whichever occurs first.

(2) If any loose or broken bolt is detected during the check required by paragraph (g)(1) of this AD, before further flight, replace all four forward engine mount bolts and associated nuts, on the engine where the loose or broken bolt was detected, with new bolts and nuts, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–71–3028, Revision 01, dated February 20, 2012.

(3) Replacement of bolts and nuts as required by paragraph (g)(2) of this AD is not terminating action for the repetitive torque checks required by paragraph (g)(1) of this AD.

(h) Compliance With AD 2006–16–05, Amendment 39–14705 (71 FR 44185, August 4, 2006)

Doing the actions required by paragraph (g) of this AD constitutes compliance with the requirements specified in paragraph (g) of AD 2006–16–05, Amendment 39–14705 (71 FR 44185, August 4, 2006).

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install any INCO718 material, forward mount pylon bolt having Pratt & Whitney part number 54T670 on any airplane.

(j) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraphs (g)(1) and (g)(2) of this AD, if those actions were performed before the effective date of this AD using Airbus Mandatory Service Bulletin A330–71–3028, dated December 16, 2011, which is not incorporated by reference in this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-*

AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(l) Related Information

(1) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2012–0094, dated May 31, 2012, for related information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0212-0002.*

(2) Service information identified in this AD that is not incorporated by reference may be viewed at the addresses specified in paragraphs (m)(3) and (m)(4) of this AD.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus Mandatory Service Bulletin A330–71–3028, Revision 01, dated February 20, 2012.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

(4) You may view copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on June 21, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–26564 Filed 11–13–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0626; Directorate Identifier 2012–NM–180–AD; Amendment 39–17642; AD 2013–22–10]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Dassault Aviation Model Fan Jet Falcon; Model Mystere-Falcon 200 airplanes; and Model Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes. This AD was prompted by reports of defective fire extinguisher bottle cartridges. This AD requires checking manufacturing references of pyrotechnical cartridges for batch number and date, repetitive checking of cartridges for electrical continuity, and replacing defective pyrotechnical cartridges if necessary. We are issuing this AD to detect and correct defective fire bottle cartridges, which could impact the capability to extinguish a fire in an engine, auxiliary power unit, or rear compartment, which could result in damage to the airplane and injury to the occupants.

DATES: This AD becomes effective December 19, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 19, 2013.

ADDRESSES: You may examine the AD on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0626;* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM published in the **Federal Register** on July 24, 2013 (78 FR 44473). The NPRM proposed to correct an unsafe condition for the specified products.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0190, dated September 24, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Several defective fire bottle cartridges have been reported on certain Dassault Aviation Fan Jet Falcon and Mystère-Falcon 20-() 5 aeroplanes.
>
> The results of the investigations concluded that there was a production quality issue with the fire bottle cartridge. In addition, the part numbers (P/N) of the fire bottle cartridge and the batch numbers have been identified.
>
> This condition, if not detected and corrected, could constitute a dormant failure that might impact the capability to extinguish a fire, either in an engine or the Auxiliary Power Unit, or the rear compartment, possibly resulting in damage to the aeroplane and injury to the occupants.
>
> For the reason described above, this [EASA] AD requires repetitive checking of the electrical continuity [and of the references] of the fire extinguishers bottles cartridges [extinguisher bottle cartridges] and depending on findings, replacement of an affected part with a serviceable part. It also ultimately requires replacement of any affected cartridges with a serviceable part. In addition, this [EASA] AD prohibits installation of an affected fire extinguisher bottle cartridge.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0626-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 44473, July 24, 2013) or on the determination of the cost to the public.

Explanation of Change Made to the AD

We have removed the phrase ''or cartridges references matching (g)(1) through (g)(3)'' in paragraph (h) of this final rule since only parts that have excessive resistance must be replaced before further flight.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD with the change described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 44473, July 24, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 44473, July 24, 2013).

Costs of Compliance

We estimate that this AD affects 185 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Check and Replacement	5 work-hours × $85 per hour = $425	$6,300	$6,725	$1,244,125

Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0626-0002;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the MCAI, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2013–22–10 Dassault Aviation: Amendment 39–17642. Docket No. FAA–2013–0626; Directorate Identifier 2012–NM–180–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective December 19, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Dassault Aviation airplanes identified in paragraphs (c)(1) through (c)(3) of this AD, certificated in any category, all serial numbers.

(1) Model Fan Jet Falcon airplanes.

(2) Model Mystere-Falcon 200 airplanes.

(3) Model Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire Protection.

(e) Reason

This AD was prompted by reports of defective fire extinguisher bottle cartridges. We are issuing this AD to detect and correct defective fire bottle cartridges, which could impact the capability to extinguish a fire in an engine, auxiliary power unit, or rear compartment, which could result in damage to the airplane and injury to the occupants.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Checks of References of Cartridges

For airplanes equipped with fire extinguisher bottle cartridges having a part number (P/N), batch number, and manufacturing date as listed in paragraph (g)(1), (g)(2), or (g)(3) of this AD: Within 30 days or 100 flight hours, whichever occurs first after the effective date of this AD, check the manufacturing references of pyrotechnical cartridges for batch number and date, and check the cartridges for electrical continuity and resistance, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin F20–783, Revision 1 (also referred to as 783–R1), dated June 11, 2012 (for Model Fan Jet Falcon and Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes); or Dassault Mandatory Service Bulletin F200–128, Revision 1 (also referred to as 128–R1), dated June 11, 2012 (for Model Mystere-Falcon 200 airplanes).

(1) P/N 12–12–11707S1–4, with batch up to 44 inclusive, manufactured before May 2012.

(2) P/N 12–12–11707S2–4, with batch up to 33 inclusive, manufactured before May 2012.

(3) P/N 12–12–11707S3–4, with batch up to 44 inclusive, manufactured before May 2012.

(h) Replacement

If, during any check as required by paragraphs (g) and (i) of this AD, a discrepancy [excessive resistance] is identified, before next flight, replace the discrepant fire extinguisher bottle cartridge(s) with a serviceable part, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin F20–783, Revision 1 (also referred to as 783–R1), dated June 11, 2012 (for Model Fan Jet Falcon and Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes); or Dassault Mandatory Service Bulletin F200–128, Revision 1 (also referred to as 128–R1), dated June 11, 2012 (for Model Mystere-Falcon 200 airplanes). Replacement of discrepant fire extinguisher bottle cartridges with a serviceable part terminates the repetitive actions required by paragraph (i) of this AD for that cartridge.

(i) Repetitive Checks

At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD, repeat the checks required by paragraph (g) of this AD.

(1) For airplanes equipped with fire extinguisher bottle cartridges having P/N 12–12–11707S3–4, having a batch number, and manufacturing date, as listed in paragraph (g)(3) of this AD, at intervals not to exceed 65 days.

(2) For airplanes equipped with fire extinguisher bottle cartridges having P/N 12–12–11707S1–4 or P/N 12–12–11707S2–4, having a batch number, and manufacturing date, as listed in paragraph (g)(1) or (g)(2) of this AD, at intervals not to exceed 12 months.

(j) Replacement

Except as required by paragraph (h) of this AD: Within 30 months after installation of an affected fire extinguisher bottle cartridge on an airplane, or within 36 months since cartridge manufacturing date, whichever occurs first after the effective date of this AD, replace each affected fire extinguisher bottle cartridge listed in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, with a serviceable part, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin F20–783, Revision 1 (also referred to as 783–R1), dated June 11, 2012 (for Model Fan Jet Falcon and Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes); or Dassault Mandatory Service Bulletin F200–128, Revision 1 (also referred to as 128–R1), dated June 11, 2012 (for Model Mystere-Falcon 200 airplanes). Replacing the affected fire extinguisher bottle cartridge with a serviceable part as required by paragraph (h) or (j) of this AD, terminates the repetitive actions required by paragraph (i) of this AD for that cartridge.

(k) Parts Installation Prohibition

As of the effective date of this AD, no person may install any fire extinguisher bottle cartridge having a part number, batch number, and manufacturing date as specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD, on any airplane.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(m) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2012–0190, dated September 24, 2012, for related information. You may examine this AD on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0626-0002.*

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Dassault Mandatory Service Bulletin F20–783, Revision 1 (also referred to as 783–R1), dated June 11, 2012.

(ii) Dassault Mandatory Service Bulletin F200–128, Revision 1 (also referred to as 128–R1), dated June 11, 2012.

(3) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.*

(4) You may review this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on October 18, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–27071 Filed 11–13–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0939; Directorate Identifier 2013–CE–043–AD; Amendment 39–17655; AD 2013–22–23]

RIN 2120–AA64

Airworthiness Directives; Aermacchi S.p.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Aermacchi S.p.A. Models F.260, F.260B, F.260C, F.260D, F.260E, F.260F, S.208, and S.208A airplanes equipped with a Lycoming O–540 wide cylinder flange engine with a front crankcase mounted propeller governor. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the set screw that fixes the setting of the propeller governor idler gear shaft was not in the proper position. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective December 16, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 16, 2013.

We must receive comments on this AD by December 30, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Alenia Aermacchi S.p.A, Via Paola Foresio, 1, 21040 Venegono Superiore (Varese)—Italy; telephone: 0331–813111; fax: 0331–827595; Internet: *http://www.aleniaaermacchi.it/en-US/Pages/custsupp.aspx.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2012–0228R1, dated November 13, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> A case of in-flight complete loss of engine oil pressure indications has been reported, resulting in an emergency landing. During the post-flight inspection on the affected engine, some metallic parts (2–4 mm) have been found. Although the origin of these parts has not been established, it seems probable that they originated from the set screw, Part Number (P/N) AN565B1032H, that fixes the setting of the propeller governor idler gear shaft, because in the affected engine, it was not found in the proper position.
>
> This condition, if not detected and corrected, could lead to engine failure, possible resulting in a forced landing, consequent damage to the aeroplane, and injury to occupants.
>
> To address this potential unsafe condition, Alenia Aermacchi issued Bollettino Tecnico (BT) 205B65 and BT 260SB–136 to instruct owners and operators of the aeroplanes that could be affected.
>
> To correct this potential unsafe condition, EASA issued Emergency AD 2012–0228–E to require repetitive inspections of the affected engines and, in case any discrepancy is found, accomplishment of the applicable corrective actions.
>
> Since AD 2012–0228–E was issued, it has become clear that only 'wide cylinder flange' engines equipped with a front crankcase propeller governor (ref to Lycoming Service Instruction No. 1343B and Lycoming Service Letter L220C) are equipped with the affected set screw P/N AN565B1032H that is the subject of this AD.
>
> For the reason described above, this AD is revised to reduce the Applicability, requiring only actions on aeroplanes fitted with a 'wide cylinder flange' engine equipped with a front crankcase propeller governor. This AD is also revised to remove, after the first inspection/correction, the limitation that prohibited aerobatic manoeuvres.
>
> This is still considered to be a temporary measure and further AD action may follow.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–0939.

Relevant Service Information

Alenia Aermacchi Una Societa Finmeccanica has issued Mandatory Bollettino Tecnico (English Translation: Technical Bulletin) No. 205B65, Revision 1, dated November 12, 2012; and Alenia Aermacchi Una Societa Finmeccanica has issued Mandatory Bollettino Tecnico (English Translation: Technical Bulletin) No. 260SB–136, Revision 1, dated November 12, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because improper position of the set screw that fixes the setting of the propeller governor idler gear could result in loss of engine oil pressure indications resulting in emergency landing. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0939; Directorate Identifier 2013–CE–043–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD will affect 43 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $50 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $9,460, or $220 per product.

Since there currently are no repair instructions available when discrepancies are found during the required inspection, the FAA has no way of determining what the cost would be per airplane that would need such repairs.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2013–22–23 Aermacchi S.p.A.: Amendment 39–17655; Docket No. FAA–2013–0939; Directorate Identifier 2013–CE–043–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective December 16, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following AERMACCHI S.p.A. airplanes that are certificated in any category:

(1) Models F.260, F.260B, F.260C, F.260D, F.260E, and F.260F airplanes, all serial numbers, that are equipped with either a Lycoming O–540, IO–540, or AEIO–540 wide cylinder flange engine (identified by the suffix ''A'' or ''E'' in the serial number) with a front crankcase mounted propeller governor; and

(2) Models S.208 and S.208A airplanes, all serial numbers, that are equipped with a Lycoming O–540 wide cylinder flange engine (identified by the suffix ''A'' or ''E'' in the serial number) with a front crankcase mounted propeller governor.

(d) Subject

Air Transport Association of America (ATA) Code 71: Powerplant.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the set screw that fixes the setting of the propeller governor idler gear shaft was not in the proper position. We are issuing this AD to detect and correct improper position of the set screw, which could lead to complete loss of engine oil pressure indications and result in emergency landing.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) through (f)(5) of this AD.

(1) *For Models F.260, F.260B, F.260C, F.260D, F.260E, and F.260F airplanes:* Before further flight after December 16, 2013 (the effective date of this AD), fabricate and install a placard that states: ''AEROBATIC MANEUVERS ARE PROHIBITED.'' Fabricate the placard using 1/8-inch black lettering on a white background and install the placard on the instrument panel in clear view of the pilot.

(2) In lieu of installing the placard, a copy of this AD may be inserted into the limitations section of the applicable airplane flight manual (AFM) to comply with the action required by paragraph (f)(1) of this AD. The insertion of the AD into the AFM may be done by an owner/operator (pilot) holding at least a private pilot certificate and must be entered into the airplane records showing compliance with this AD in accordance with 14 CFR 43.9 (a)(1)(4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.173, 121.380, or 135.439.

(3) *For all airplanes:* Within the next 10 hours time-in-service (TIS) after December 16, 2013 (the effective date of this AD) and repetitively thereafter at intervals not to exceed 100 hours TIS, inspect the propeller governor idler gear shaft set screw, part number (P/N) AN565B1032H, following the Compliance Instructions of Alenia Aermacchi Una Societa Finmeccanica Mandatory Bollettino Tecnico (English Translation: Technical Bulletin) No. 205B65, Revision 1, dated November 12, 2012; or Alenia Aermacchi Una Societa Finmeccanica Mandatory Bollettino Tecnico (English Translation: Technical Bulletin) No. 260SB–136, Revision 1, dated November 12, 2012, as applicable.

(4) If a discrepancy (e.g., set screw missing or unscrewed) is found during any inspection required by paragraph (f)(3) of this AD, before further flight, contact Alenia Aermacchi S.p.A. for repair instructions approved by the FAA specifically for this AD and incorporate the repair instructions. You may contact Alenia Aermacchi S.p.A. using the contact information found in paragraph (k)(3) of this AD.

(5) After the initial inspection required by paragraph (f)(3) of this AD, provided no discrepancies were found or any discrepancies found were corrected as required by paragraph (f)(4) of this AD, remove the placard or the copy of the AD that was inserted into the AFM required by paragraphs (f)(1) or (f)(2) of this AD.

(g) Credit for Actions Accomplished in Accordance With Previous Service Information

This AD allows credit for the actions required in paragraphs (f)(2) and (f)(3) of this AD if done before December 16, 2013 (the effective date of this AD) following Alenia Aermacchi Una Societa Finmeccanica Mandatory Bollettino Tecnico (English Translation: Technical Bulletin) No. 205B65, dated October 26, 2012; or Alenia Aermacchi Una Societa Finmeccanica Mandatory Bollettino Tecnico (English Translation: Technical Bulletin) No. 260SB–136, dated October 26, 2012, as applicable.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(i) Special Flight Permit

Special flight permits are permitted with the following limitation: Aerobatic maneuvers are prohibited until the actions of the AD are complied with.

(j) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2012–0228R1, dated November 13, 2012, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–0939.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Alenia Aermacchi Una Societa Finmeccanica Mandatory Bollettino Tecnico (English Translation: Technical Bulletin) No. 205B65, Revision 1, dated November 12, 2012.

(ii) Alenia Aermacchi Una Societa Finmeccanica Mandatory Bollettino Tecnico (English Translation: Technical Bulletin) No. 260SB–136, Revision 1, dated November 12, 2012.

(3) For service information identified in this AD, contact Alenia Aermacchi S.p.A, Via Paola Foresio, 1, 21040 Venegono Superiore (Varese)—Italy; telephone: 0331–813111; fax: 0331–827595; Internet: *http://www.aleniaaermacchi.it/en-US/Pages/custsupp.aspx.*

(4) You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on October 31, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–26681 Filed 11–13–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0029; Directorate Identifier 2013–NE–01–AD; Amendment 39–17599; AD 2013–19–17]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to all Rolls-Royce plc (RR) RB211–535E4–B–37 series turbofan engines. The AD number is incorrect in the Regulatory text. This document corrects that error. In all other respects, the original document remains the same.

DATES: This final rule is effective November 7, 2013.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *robert.green@faa.gov.*

SUPPLEMENTARY INFORMATION: Airworthiness Directive 2013–19–17, Amendment 39–17599 (78 FR 61171, October 3, 2013), currently requires removal of affected parts using a drawdown plan for all RR RB211–535E4–B–37 series turbofan engines.

As published, the AD number 2013–19–17 under § 39.13 [Amended], is incorrect.

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the final rule is being published in the **Federal Register**.

The effective date of this AD remains November 7, 2013.

Correction of Regulatory Text

§ 39.13 [Corrected]

In the **Federal Register** of October 3, 2013, on page 61173, in the first column, lines 4 and 5, under § 39.13 [Amended] of AD 2013–19–17, are corrected to read as follows:

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2013–19–17 Rolls-Royce plc: Amendment 39–17599; Docket No. FAA–2013–0029;

* * * * *

Issued in Burlington, Massachusetts, on October 25, 2013.

Colleen M. D'Alessandro,

Assistant Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2013–27190 Filed 11–13–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2013–0061]

Unmanned Aircraft System Test Site Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of final privacy requirements for the unmanned aircraft system (''UAS'') test site program; response to comments.

SUMMARY: On February 22, 2013 the FAA published and requested public comment on the proposed privacy requirements (the ''Draft Privacy Requirements'') for UAS test sites (the ''Test Sites'') that the FAA will establish pursuant to the FAA Modernization and Reform Act of 2012 (''FMRA''). This document responds to the public comments received and publishes the FAA's final privacy requirements for the Test Sites (the ''Final Privacy Requirements'').

DATES: November 14, 2013.

ADDRESSES: You may review the public docket for this rulemaking (Docket No. FAA–2013–0061) on the Internet at *http://www.regulations.gov.* You may also review the public docket at the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning the test site program, contact Elizabeth Soltys, Unmanned Aircraft Systems Integration Office, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; email: *9-ACT-UASTSS@faa.gov.*

For legal questions concerning the FAA's privacy requirements for the Test Sites contact Carlos Siso, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; email: *9-AGC-UASPrivacy@faa.gov.*

SUPPLEMENTARY INFORMATION: This document summarizes and responds to the public comments received in response to the following **Federal Register** documents seeking public comment on the Draft Privacy Requirements for the Test Sites:

(i) Notice of availability and request for comments published in the **Federal Register** on February 22, 2013 (78 FR 12259), Docket No. FAA–2013–0061–0001; and

(ii) Notice of public engagement session published in the **Federal Register** on March 28, 2013 (78 FR 18932), Docket No. FAA–2013–0061–0050.

In addition, this document publishes the FAA's Final Privacy Requirements for the Test Sites which are set forth under the ''Conclusion'' section below.

Discussion of Comments

The FAA received 99 comments through Regulations.gov and 53 comments through the public engagement session. A transcript of the public engagement session is available at: *http://www.faa.gov/about/initiatives/uas/media/UAStranscription.pdf.* Public comments ranged from recommending that the FAA not impose any privacy requirements on the Test Sites to recommending that the FAA impose extensive privacy requirements on the Test Sites. The FAA also received comments that were not responsive to the notice or that were unclear.

The FAA analyzed the responsive comments and grouped them into ten categories. The following sections address the comments by category.

(1) The FAA should focus on its safety mission; it should not engage in regulating privacy.

The FAA received a number of comments advocating that the FAA should focus on its safety mission and should not engage in regulating privacy. The following comments were received:

- The FAA should focus on safety;
- Regulating privacy is outside the FAA's mission;
- The FAA does not have statutory authority to regulate privacy;
- The FAA does not have the authority to impose privacy requirements on the Test Sites;
- The FAA should allow privacy to be addressed by other more appropriate government bodies including: Federal agencies that have expertise and authority to deal with privacy concerns; Congress; state or local legislative bodies; and the judicial system;
- The Federal Government should not regulate privacy impacts of UAS; these issues should be left to states, cities, and counties to address;
- The FAA should only require compliance with privacy laws that are already in place and focus on developing safe operation of UAS;
- The FAA should not deny access to the national airspace for reasons other than safety;
- Existing privacy laws are sufficient to cover the responsible use of UAS. There already exist Federal, state and other laws that protect privacy. In addition, tort law may also provide avenues of recourse for plaintiffs to protect their privacy rights;
- The FAA should not implement privacy regulations that make entry into the market prohibitive for small businesses;
- The FAA should not allow privacy issues to hinder commercialization of UAS;
- There is no evidence that the operations at the Test Sites will harm privacy interests. Restricting activities at the test sites at this early stage will likely overprotect privacy at the expense of innovation;
- The FAA should afford adequate time for non-governmental solutions such as industry norms and practices to develop before intervening administratively to protect privacy. These less restrictive solutions will reduce the need for administrative intervention and will allow for increased innovation in the national airspace;
- Requiring Test Site operators to develop privacy policies that are informed by Fair Information Practice Principles is onerous for commercial operators of UAS and its cost will likely outweigh any hypothetical benefits;
- Requiring Test Site operators to issue privacy policies informed by Fair Information Practice Principles will limit the diversity of data that will inform integration of UAS into the national airspace. The FAA's approach would exclude an important possible alternative from the discussion: some operators might choose not to issue a privacy policy or adopt a non-FIPPs-compliant policy; and
- The FAA should treat data gathered by UAS no differently than data gathered by a manned aircraft or by other electronic means. There is no significant difference in terms of surveillance between a UAS and a manned aircraft, and manned aircraft are permitted to operate in the national airspace with cameras.

Response: The FAA's mission is to provide the safest, most efficient aerospace system in the world and does not include regulating privacy. At the same time, the FAA recognizes that there is substantial debate and difference of opinion among policy makers, industry, advocacy groups, and members of the public as to whether UAS operations at the Test Sites will raise novel privacy issues that are not adequately addressed by existing legal frameworks.

The FAA will require the Test Site operators to comply with the Final Privacy Requirements. Congress mandated that the FAA establish the Test Sites to further UAS integration into the national airspace system. The Final Privacy Requirements advance this purpose by helping inform the dialogue among policymakers, privacy advocates, and industry regarding the impact of UAS technologies on privacy.

The FAA's authority for including the Final Privacy Requirements in the Test Site OTAs is set forth in 49 U.S.C. 106(l)(6). That statute authorizes the FAA Administrator to enter into an OTA ''on such terms and conditions as the Administrator may consider appropriate.'' The FAA believes that it is appropriate to require Test Site operators to comply with the Final Privacy Requirements.

(2) The FAA should require warrants before law enforcement can use UAS in the Test Sites to conduct surveillance or gather evidence.

The FAA received a variety of comments advocating that:

- The FAA should include provisions in the OTA that require warrants to be obtained when UAS are used to conduct surveillance or gather evidence within the Test Site; and

- The OTA include appropriate safeguards to protect Fourth Amendment rights at and around our national borders.

Response: The FAA's mission is to provide the safest, most efficient aerospace system in the world. The FAA is establishing the UAS Test Sites consistent with its mission and the direction in the FMRA. The FAA appreciates the commenters' concerns. Accordingly, the final privacy requirements provide that the Site Operator and its team members must comply with all applicable privacy laws.

(3) The FAA should mandate specific privacy requirements for the Test Sites.

The FAA received a variety of comments advocating that the FAA mandate specific privacy requirements for the Test Sites. The recommendations included the following:

- The FAA should specify minimum privacy requirements and require each Test Site to comply with them;
- The FAA should mandate compliance with Fair Information Practice Principles for all Test Site operators;
- The FAA should establish prohibitions on where UAS can operate within a Test Site and the kinds of surveillance activities that UAS conduct at the Test Sites;
- The FAA should require all UAS flown at the Test Sites to have unencrypted down links so that all their data collection can be viewed by the public, including records contained onboard and recovered after landing;
- The FAA should require each Test Site operator to conduct a full Privacy Impact Assessment;
- The FAA should require each Test Site operator to establish a Chief Privacy Officer and centralize privacy responsibilities in that person;
- The FAA should require each Test Site operator to establish a privacy advisory committee to review proposed UAS research at the Test Sites for privacy concerns;
- The FAA should require each Test Site operator to provide a detailed response to public input it receives regarding the Test Site's privacy policy;
- The FAA should prohibit the sharing of recorded surveillance footage beyond the scope of its original purpose;
- The FAA should prohibit UAS in the Test Sites from flying below a minimum altitude;
- The FAA should prohibit UAS in the Test Sites from carrying any equipment that could be used to conduct surveillance;
- The FAA should limit the use of the data collected at the Test Sites;
- The FAA should prohibit (i) the use of Test Sites for government surveillance, and (ii) sharing data collected with law enforcement for the purpose of investigating or prosecuting a crime;
- The FAA should limit the type of data that can be collected by UAS at the Test Sites including limiting the resolution of visual imagery that UAS can collect, prohibiting recording of audio data, and restricting the ability to collect WiFi and cellular signals;
- The FAA should require Test Site operators to provide data on the payload of each UAS flown at the Test Site including specific information on the data the payload is capable of collecting;
- The FAA should mandate privacy policies that require deletion of collected data within a certain time period;
- The FAA should prohibit the Test Site operator and UAS operators at the Test Sites from retaining any data collected longer than is necessary to fulfill the purpose of the Test Site;
- The FAA should require UAS operators to file data collection statements with the FAA for UAS operations that involve remote sensing and signals surveillance from the UAS platform; and
- The FAA should require UAS operating at altitudes over 400 feet to carry an automatic dependent surveillance-broadcast transponder (ADS–B Out) so that UAS operations can be tracked.

Response: The FAA's mission is to provide the safest, most efficient aerospace system in the world. Although there is a long history of placing cameras and other sensors on aircraft for a variety of purposes—news helicopters, aerial surveys, film/television production, law enforcement, etc.—the FAA is not, through awarding and supervising these Test Sites, taking specific views on whether or how the Federal Government should regulate privacy or the scope of data that can be collected by manned or unmanned aircraft.

There was substantial difference of opinion among commenters as to whether UAS operations and manned aircraft operations present different privacy issues that justify imposing special privacy restrictions on UAS operations at the Test Sites. In addition, there was substantial difference of opinion among commenters regarding what elements would be appropriate for a Test Site privacy policy. Based on the comments received, the FAA will require Test Sites to comply with the following requirements in addition to those described in the Draft Privacy Requirements:

(1) Test site operators must maintain a record of all UAS operating in the test sites;

(2) Test site operators must require every UAS operator in the Test Site to have a written plan for the operator's use and retention of data collected by the UAS; and

(3) Test site operators must conduct an annual review of test site operations to verify compliance with stated privacy policy and practices and share those outcomes annually in a public forum with an opportunity for public feedback.

The above are reflected in the Final Privacy Requirements.

The FAA has determined that it should not impose privacy requirements beyond those in the Final Privacy Requirements for the following reasons. *First,* there are many privacy laws and applications of tort law that may address some of the privacy issues that arise from UAS operations at the Test Sites.

Second, the FAA believes that Test Sites operators will be responsive to local stakeholders' privacy concerns and will develop privacy policies appropriately tailored to each Test Site. The selection criteria for the Test Sites specify that only a ''public entity'' can serve as a Test Site operator. The term ''public entity'' is defined in the selection criteria to mean ''(A) any State or local government; (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and (C) the National Railroad Passenger Corporation, and any commuter authority.'' The FAA expects that public entities will be responsive to stakeholder concerns.

Third, if UAS operations at a Test Site raise privacy concerns that are not adequately addressed by the Test Site's privacy policies, elected officials can weigh the benefits and costs of additional privacy laws or regulations. Forty-three states have already enacted or are considering legislation regulating use of UAS. *See Drone Legislation All the Rage; Varies Widely Across 43 States, According to WestlawNext,* June 17, 2013, *available at: http://thomsonreuters.com/press-releases/062013/drone_legislation_varies_across_states_according_to_Westlaw.*

(4) The FAA should conduct audits of the Test Sites to ensure compliance with privacy policies.

Various commenters recommended that the FAA should audit each Test Site to ensure compliance with the privacy policies in the OTA.

Response: Each Test Site will be operated by a public entity (see response to Category 3 above). The FAA expects that the public entity operating each test site will already be subject to oversight and audit requirements. The FAA does not believe that it is appropriate for the FAA to impose additional audit requirements on the Test Site operators.

(5) The FAA should require Test Site operators to keep records that will allow for effective citizen participation and reporting of privacy violations.

One commenter recommended that the FAA require Test Site operators to keep accurate, detailed, frequent, and accessible records to allow for effective citizen participation and reporting of privacy violations.

Response: Each Test Site operator will be a public entity (see response to Category 3 above). Public entities are generally subject to laws that establish record keeping requirements and provide the public access to records. The FAA does not believe that it is appropriate for the FAA to impose additional record keeping requirements on the Test Site operators other than those specified in the Final Privacy Requirements.

(6) The FAA should establish a searchable database or registry of UAS operators and operations at the Test Sites.

The FAA received a variety of comments advocating that:

- The FAA should create a public, searchable database or registry of all UAS operators. Some commenters recommended that the database include information about surveillance equipment used and the operator's data collection practices;
- The FAA should require UAS operators at the Test Sites to provide public statements describing the surveillance equipment that will be carried by a UAS, the geographical area where the UAS will be operated, and the purposes for which the UAS will be deployed; and
- The FAA should establish a means for the public to access the data on UAS flights collected by the FAA.

Response: The FAA believes that it is not appropriate for the FAA to create a public registry or database of UAS operations at the Test Sites. However, the FAA has included a contractual provision in the Final Privacy Requirements that will require each Test Site operator to maintain a record of all UAS operating at the Test Site.

(7) The FAA should modify its Test Site selection criteria to take into account privacy concerns.

Various commenters recommended that the FAA revise its selection criteria. Suggestions included the following:

- The FAA should choose an applicant that has an established UAS research program with active engagement with UAS privacy issues;
- The FAA should choose at least one Test Site in a state with strong privacy protective UAS laws and regulations;
- The FAA should select one or more Test Sites in or near a densely populated urban area in order to avoid a bias towards privacy issues relevant for rural UAS operations; and
- The FAA should consider the privacy track record of applicants as part of the selection process.

Response: The FAA believes that it is not appropriate to modify the Test Site selection criteria to include the recommended privacy considerations. Applicants have already submitted complete applications based on the announced selection criteria and the application period has closed.

The FAA published the Test Site selection criteria and application instructions on February 14, 2013 on *https://faaco.faa.gov* under Solicitation number DTFACT–13–R–00002. The selection criteria incorporate the factors that Congress directed the FAA to consider in the FMRA, including, geographic and climatic diversity; location of ground infrastructure; and research needs. The FAA required applicants to submit seven volumes of extensive and detailed information that address a broad set of considerations including safety, airspace use, experience, research objectives, and risk considerations. This information will allow the FAA to make a selection based on the direction provided by Congress in the FMRA and on the FAA's mission.

The FAA developed the Test Site selection criteria after seeking public input and consulting with other agencies regarding what selection criteria would be appropriate. In March 2012, the FAA published a request for comment in the **Federal Register** and in April 2012, the FAA hosted two public webinars to obtain public input on the FAA's proposed selection criteria. Although there was significant public participation, the FAA did not receive comments advocating that privacy issues be used as a factor in choosing the Test Sites.

(8) The FAA should require Test Site operators to conduct specific tests related to privacy and surveillance.

Commenters recommended that the FAA should:

- Require UAS operators at Test Sites to conduct specific tests related to surveillance and privacy;
- Require Test Site operators to design the sites—including the creation of ''fake'' houses or businesses—to allow UAS operators to test how accurate their surveillance systems are and test how much data those systems collect; and
- Develop and require Test Sites to implement a standard battery of privacy tests that each UAS operating within a Test Site should have to perform in order to collect data that the FAA can use to make decisions about privacy issues.

Response: The FAA is not planning to have the Test Site operators conduct specific research.

(9) The FAA should not take punitive actions against a Test Site operator for privacy violations without due process.

One commenter noted that if charges are filed by law enforcement against a Test Site operator due to potential violations of privacy laws, the OTA allows the FAA to suspend or modify the relevant operational authority for a Test Site (e.g. Certificate of Operation, or OTA). That commenter recommended that a Test Site operator be entitled to due process before the operational authority be suspended or modified.

Response: A Test Site operator's rights to operate a Test Site are set forth in the OTA and are subject to the terms and conditions in the OTA. The FAA believes that it is appropriate to include contractual provisions in the Final Privacy Requirements that allow the FAA to protect the public interest by suspending or modifying the relevant operational authority for a Test Site if charges are filed by law enforcement against a Test Site operator due to potential violations of privacy laws.

(10) The FAA should establish sanctions for violations of privacy policies or rights.

One commenter recommended that the FAA rescind the OTA for a Test Site where serious privacy violations have occurred and levy fines against operators that fail to comply with privacy policies.

Response: The Final Privacy Requirements provide that violations of privacy laws can result in suspension or termination of the OTA.

The FAA will not monitor a Test Site's compliance with its own privacy policies. The FAA expects the public entities operating the Tests Sites and their respective state/local oversight bodies to monitor and enforce a Test Site's compliance with its own policies.

Conclusion

Based on the comments submitted, the FAA intends to require each test site operator to comply with all of the privacy requirements included in the Draft Privacy Requirements as well as the following additional privacy requirements:

(1) Test site operators must maintain a record of all UAS operating in the test sites;

(2) Test site operators must require every UAS operator in the Test Site to have a written plan for the operator's use and retention of data collected by the UAS; and

(3) Test site operators must conduct an annual review of test site operations to verify compliance with stated privacy policy and practices and share those outcomes annually in a public forum with an opportunity for public feedback.

Accordingly, the FAA intends to include the following terms and conditions into Article 3 of the OTA:

''ARTICLE 3 PRIVACY; APPLICABLE LAW

a. Privacy Policies

The Site Operator must:

(i) Have privacy policies governing all activities conducted under the OTA, including the operation and relevant activities of the UAS authorized by the Site Operator.

(ii) Make its privacy policies publicly available;

(iii) Have a mechanism to receive and consider comments from the public on its privacy policies;

(iv) Conduct an annual review of test site operations to verify compliance with stated privacy policy and practices and share those outcomes annually in a public forum with an opportunity for public feedback;

(v) Update its privacy policies as necessary to remain operationally current and effective; and

(vi) Ensure the requirements of its privacy policies are applied to all operations conducted under the OTA.

The Site Operator's privacy policies should be informed by Fair Information Practice Principles.

b. Compliance With Applicable Privacy Laws

For purposes of this agreement, the term ''Applicable Law'' shall mean (i) a law, order, regulation, or rule of an administrative or legislative government body with jurisdiction over the matter in question, or (ii) a ruling, order, decision or judgment of a court with jurisdiction over the matter in question. The Site Operator and its team members must operate in accordance with all Applicable Law regarding the protection of an individual's right to privacy (hereinafter referred to as ''Privacy Laws''). If the U.S. Department of Justice or a state's law enforcement authority files criminal or civil charges over a potential violation of a Privacy Law, the FAA may take appropriate action including suspending or modifying the relevant operational authority (e.g., Certificate of Operation, or OTA) until the proceedings are completed. If the proceedings demonstrate the operation was in violation of the Privacy Law, the FAA may terminate the relevant operational authority.

c. Change in Law

If during the term of this Agreement an Applicable Law comes into effect which may have an impact on UAS, including impacts on the privacy interests of individuals or entities affected by any operation of any UAS operating at the Test Site, such Applicable Law will be applicable to the OTA and the FAA may update or amend the OTA to reflect these changes.

d. Transmission of Data to the FAA

The Site Operator should not provide or transmit to the FAA or its designees any data other than the data the data requested by the FAA pursuant to Article 5 of this OTA.

e. Other Requirements

The Site Operator must:

(i) Maintain a record of all UAS operating at the test sites; and

(ii) Require each UAS operator in the Test Site to have a written plan for the operator's use and retention of data collected by the UAS.''

Issued in Washington, DC, on November 7, 2013.

Marc L. Warren,

Acting Chief Counsel, Federal Aviation Administration.

[FR Doc. 2013–27216 Filed 11–8–13; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AN98

Payment for Home Health Services and Hospice Care to Non-VA Providers; Delay of Effective Date

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; delay of effective date.

SUMMARY: The Department of Veterans Affairs (VA) published in the **Federal Register** on May 6, 2013 (78 FR 26250) a final rule to change the billing methodology for non-VA providers of home health services and hospice care. The preamble of that final rule stated the effective date was November 15, 2013. This document delays that effective date to April 1, 2014.

DATES: *Effective Date:* The effective date for the final rule published May 6, 2013, at 78 FR 26250, is delayed from November 15, 2013, until April 1, 2014.

FOR FURTHER INFORMATION CONTACT: Harold Bailey, Director of Administration, Department of Veterans Affairs, Veterans Health Administration, 3773 Cherry Creek Drive North, East Tower, Ste. 485, Denver, CO 80209, (303) 331–7829. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This rulemaking makes the VA regulation governing payments for certain non-VA health care, 38 CFR 17.56, applicable to non-VA home health services and hospice care. Section 17.56 provides, among other things, that Centers for Medicare and Medicaid (CMS) fee schedule or prospective payment system amounts will be paid to certain non-VA providers, unless VA negotiates other payment amounts with such providers. See 38 CFR 17.56(a)(2)(i). This change in the billing methodology for non-VA home health and hospice care was put forth in a proposed rule. We received one comment to this change and responded to that comment in a final rule published in the **Federal Register** on May 6, 2013 (78 FR 26250). The original effective date of the final rule was stated as November 15, 2013; however, we now delay the effective date of the final rule at 78 FR 26250 to the new effective date of April 1, 2014. The delay of the effective date is necessary to accommodate unforeseen difficulties in contracting and information technology procedures required to apply the billing methodology under § 17.56 to non-VA home health services and hospice care. These difficulties relate to separate administration of hospice care and home health services by the Veterans Health Administration's Office of Geriatrics and Extended Care, which uses separate methods for forming agreements with non-VA providers for the provision of these services, and difficulties regarding information technology systems necessary to use the CMS rate made applicable under § 17.36.

Dated: November 8, 2013.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–27218 Filed 11–13–13; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0407; FRL–9902–53–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Removal of the Regulation for the National Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Virginia State Implementation Plan (SIP). The revision removes Virginia's repealed regulation for the National Low Emission Vehicle (NLEV) program from the Virginia SIP. Virginia repealed its regulation in December 2011, because the NLEV program was superseded by more stringent Federal Tier 2 passenger car and light-duty truck standards, which were promulgated by EPA on February 10, 2000. The Federal Tier 2 vehicle standards, which were implemented on a phased-in basis between model years 2004 and 2006, marked the expiration of the NLEV program, per the framework established by the NLEV program at its inception. Therefore, EPA is approving this revision to remove Virginia's repealed NLEV regulation from the Virginia SIP, in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on January 13, 2014 without further notice, unless EPA receives adverse written comment by December 16, 2013. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0407 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov*.

C. Mail: EPA–R03–OAR–2013–0407, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2013–0407. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814–2176, or by email at *rehn.brian@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal NLEV program was a voluntary, nationwide program to control emissions from new passenger cars and light-duty trucks, for the purpose of reducing the formation of ground level ozone and other air pollution emitting by new vehicles after the program took effect. Given the need for additional reductions of ozone precursor emissions in the Ozone Transport Region (OTR), the Ozone Transport Commission (OTC) states sought additional reductions from more stringent new vehicle standards than the Federal Tier 1 vehicle program that was in place at that time. The only option for more stringent vehicle emission standards afforded to the OTC states by the CAA was adoption of Low Emission Vehicle standards developed by California (CA LEV) to meet its own unique air quality goals. The OTC pressed for adoption of CA LEV throughout the OTR, in place of Federal Tier 1 vehicle emission standards, which commenced with the 1994 model year and were then in effect in most of the OTC member states (except New York and Massachusetts, which had already opted for CA LEV standards). Faced with complying with these differing vehicle emission standards across a ''patchwork'' of states across the United States, the auto manufacturers coordinated with OTC, environmentalists, fuel providers, and EPA, among others, to develop the NLEV program.

On June 6, 1997 (62 FR 31192) and on January 7, 1998 (63 FR 926), EPA promulgated rules outlining the framework for the NLEV program. These NLEV rules allowed auto manufacturers to commit to meet tailpipe standards for passenger cars and light trucks that were more stringent than Federal Tier 1 standards that were then mandatory under authority of Title II of the CAA. The NLEV regulatory framework was voluntary in that the program took effect only after the Northeast states and auto manufacturers agreed to participate in the NLEV framework and be bound by the standards. On March 9, 1998 (63 FR 11374), EPA published a finding that the NLEV program was in effect, after the Governors of nine OTR states (Connecticut, Delaware, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Virginia, and the District of Columbia) and twenty-three U.S. market auto manufacturers agreed to participate. The NLEV framework became effective after these initial commitments, followed by incorporation of the states' participation commitments being incorporated into each participating state's SIP.

Virginia's adopted program rules covering its participation in the NLEV program (Regulation 9 VAC 5 Chapter 200) on January 7, 1999. Virginia then submitted its adopted regulation as a SIP revision to EPA on May 27, 1999. EPA approved Virginia's revision to the SIP through a final rule published on December 28, 1999 (64 FR 72564).

In accordance with EPA's NLEV regulatory framework rule, Virginia's regulation established that the Commonwealth's participation in the NLEV program would extend until model year 2006. However, if EPA adopted Federal Tier 2 standards that were more stringent than NLEV by December 15, 2000, Virginia's rule limited participation in the NLEV program until model year 2004.

On February 10, 2000, EPA published a final rule in the **Federal Register** (65 FR 6698) adopting Federal Tier 2 standards that were more stringent than the Federal NLEV program, commencing with model year 2004. Subsequently, Virginia repealed its NLEV regulation (9 VAC5–200), in its entirety, on December 2, 2011.

II. Summary of SIP Revision

On August 1, 2013, the Commonwealth of Virginia submitted a formal revision to its State Implementation Plan (SIP). The SIP revision serves to remove from the SIP Virginia's NLEV regulation, which was adopted by the Commonwealth in 1999. By model year 2006, the Federal NLEV program had been fully superseded by Federal Tier 2 passenger car and light-truck standards. Since the Federal Tier 2 program was designed by EPA to supersede the NLEV program and was by design more stringent with respect to control of regulated vehicle emissions than the NLEV program it replaced, there is no need for a state repealing its NLEV regulations to determine whether the removal of these provisions from the SIP will interfere with any applicable requirement concerning attainment and maintenance of any applicable National Ambient Air Quality Standard (NAAQS) under section 110(l) of the Clean Air Act.

Virginia's NLEV regulation expired with the implementation of the Federal Tier 2 vehicle standards program, and in December 2011 Virginia repealed Regulation 9 VAC 5 Chapter 200, effective June 7, 2012.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) Are prepared independently of the assessment process; (3) Demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) Are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code § 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.'' Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its programs consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving Virginia's SIP revision to remove the now expired NLEV program from the SIP to reflect Virginia's repeal of its NLEV program regulation at the state level. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register,** EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on January 13, 2014 without further notice unless EPA receives adverse comment by December 16, 2013. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 13, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This rulemaking action to remove Virginia's NLEV program from the Virginia SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: September 30, 2013.

W.C. Early,

Acting, Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by removing the entries for 9 VAC 5 Chapter 200 ''National Low Emission Vehicle Program'' in its entirety.

[FR Doc. 2013–27029 Filed 11–13–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0997; FRL–9901–38–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Ohio NO_X SIP Call Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 15, 2010, Ohio EPA submitted to EPA revisions to Ohio OAC 3745–14. EPA is approving these revisions under the Clean Air Act, which allows for Ohio's Clean Air Interstate Rule (CAIR) NO_X Ozone Season Trading Program rules to supersede Ohio's nitrogen oxides (NO_X) State Implementation Plan (SIP) Call Budget Trading Program rules, but leave other requirements of the NO_X SIP Call in place for units not covered by CAIR.

DATES: This rule is effective January 13, 2014, unless EPA receives adverse comments by December 16, 2013. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0997, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2010–0997. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra, Environmental Scientist, at (312) 886–9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *Arra.Sarah@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background

On October 27, 1998 (63 FR 57356), EPA published the ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' commonly referred to as the NO_X SIP Call. Under the NO_X SIP Call, 22 states and the District of Columbia, including Ohio, were required to submit plans reducing NO_X emissions to reduce ozone transport throughout the eastern half of the United States. The obligations of the rule could be met through a cap and trade program for NO_X emissions (referred to as the NO_X Budget Trading Program) for large electric generating units (EGUs) and other large boilers and turbines (non-EGUs), along with controls on cement kilns and large internal combustion engines. Under the NO_X SIP Call, states have flexibility in determining where NO_X emission reductions are achieved and can choose other ways to comply. For the most part, states found that EGUs and other large industrial boilers, cement kilns, and internal combustion engines were the most cost-effective sources for NO_X emissions reductions.

On May 12, 2005 (70 CFR 25162), EPA published the ''Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone,'' commonly known as the Clean Air Interstate Rule (CAIR). This rule required 28 states and the District of Columbia to submit plans reducing NO_X and sulfur dioxide (SO_2) emissions to reduce the interstate transport of ozone and fine particulates. Each state generally has separate budgets for ozone season NO_X, annual NO_X, and annual SO_2 emissions. For each covered pollutant, the state must achieve the required emission reductions either by requiring EGUs (and large non-EGUs in the case of ozone season NO_X) to participate in an EPA-administered interstate cap and trade system that caps emissions in two stages, or by meeting an individual state emissions budget through measures of the state's choosing. CAIR includes a NO_X Ozone Season Trading Program that supersedes the NOx Budget Trading Program. States subject to both the NO_X SIP Call and CAIR's ozone season NO_X requirements (including Ohio) could choose to participate in the CAIR NO_X Ozone Season Trading Program and in so doing satisfy the requirements of the NO_X SIP Call with regard to EGUs and large non-EGUs. In 2008, the D.C. Circuit Court of Appeals remanded CAIR to EPA but left the rule in place pending its replacement. *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir.), *modified,* 550 F.3d 1176 (D.C. Cir. 2008).

In response to the remand of CAIR, on August 8, 2011 (76 FR 48208), EPA published the ''Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals,'' commonly known as the Cross-State Air Pollution Rule (CSAPR). CSAPR addresses interstate transport of ozone and fine particulates by setting state budgets for 28 states, including Ohio, for ozone season NO_X, annual NO_X, and annual SO_2 emissions. CSAPR also establishes emissions trading programs that would replace the CAIR emissions trading programs. On August 21, 2012, the D.C. Circuit Court of Appeals vacated CSAPR, and ordered EPA to continue implementing CAIR in the interim. On June 24, 2013, the U.S. Supreme Court granted EPA's petition for certiorari and agreed to review the decision by the D.C. Circuit Court. *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), *cert. granted,* 81 U.S.L.W. 3702 (U.S. June 24, 2013) (No. 12–1182). In the meantime, and unless the *EME Homer City* decision is reversed or otherwise modified by the Supreme Court, CAIR remains in place and EPA intends to act in accordance with the D.C. Circuit opinion in *EME Homer City.*

II. Analysis of Ohio's SIP Revisions

On November 15, 2010, Ohio EPA submitted to EPA revisions to Ohio OAC 3745–14, the chapter containing Ohio's rules for the NO_X SIP Call. The revisions were specifically in sections 3745–14–01 and 3745–14–06, and allow for Ohio's CAIR NO_X Ozone Season Trading Program rules to supersede Ohio's NO_X Budget Trading Program rules. Although Ohio submitted these revisions before the promulgation of CSAPR, the revisions are still relevant given the continuing implementation of CAIR.

The first revision adds a subsection to OAC 3745–14–01 which allows units subject to OAC 3745–109, Ohio's CAIR rules, to be exempt from Ohio's NO_X Budget Trading Program rules. In context, the new subsection states, ''(2) The following units shall be exempt from the requirements of the NO_X budget trading program: (a) *Any unit to which Chapter 3745–109 of the Administrative Code applies.''* (OAC 3745–14–01(C)) (emphasis added showing new language). Because participation in the CAIR NO_X Ozone Season Trading Program satisfies the NO_X SIP Call for EGUs and large non-EGUs, units subject to CAIR would not need additional rules under the NO_X SIP Call. Also, Ohio's requested revisions to OAC 3745–14–01 would leave the monitoring and reporting requirements of OAC 3745–14 in place for any EGUs or large non-EGUs subject to the NO_X SIP Call that would not otherwise be required to monitor and report ozone season NO_X emissions using 40 CFR Part 75.

The second revision adds a subsection to OAC 3745–14–06 addressing excess emissions for the 2008 control period, the final year of the NO_X Budget Trading Program. Under the trading programs, affected units are allocated a certain number of allowances each year. An allowance is equal to a ton of NO_X emissions. Allowances can also be transferred to or from other participating units. The resulting number of allowances held for a given unit makes up the unit's compliance account. At the end of each year, allowances equal to the unit's actual emissions for the covered period are deducted from the unit's compliance account. Any excess of the unit's emissions over the total number of allowances in the compliance account, as well as any additional quantity of allowances owed due to the excess emissions penalty, is deducted from the unit's allocations for subsequent years. The SIP revision for OAC 3745–14–06 provides that allowance deductions related to any excess emissions by a unit for the 2008 control period should be taken from the unit's CAIR NO_X Ozone Season Trading Program compliance account rather than the unit's NO_X Budget Trading Program compliance account, because NO_X Budget Trading Program compliance accounts would not receive any allowance allocations for years after 2008.

2008 was the year the NO_X Budget Trading Program transitioned to the CAIR NO_X Ozone Season Trading Program, therefore the deduction of allowances based on a source's old NO_X Budget Trading Program budget from the source's new CAIR NO_X Ozone Season Trading Program budget ensures that the source is still accountable for emissions penalties based on excess emissions despite the rule transition. EPA finds the revisions to OAC 3745–14–01, transitioning applicable emissions units from Ohio's NO_X Budget Trading Program rules to Ohio's CAIR rules, and revisions to OAC 3745–14–06, transitioning 2008 allowance deductions, approvable under the Clean Air Act.

III. What action is EPA taking?

EPA is approving revisions to OAC 3745–14, specifically the additions to sections 3745–14–01 and 3745–14–06 and the associated renumbering. CAIR is the current rule implementing a trading program to address interstate transport and was promulgated to replace the NO_X SIP Call. CAIR is a more stringent program and exceeds the requirements of the NO_X SIP Call. These revisions allow for Ohio's CAIR NO_X Ozone Season Trading Program to replace Ohio's NO_X Budget Trading Program where applicable, but leave the requirements of the NO_X SIP Call in place for units not covered by CAIR. These revisions are consistent with the Clean Air Act and CAIR.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective January 13, 2014 without further notice unless we receive relevant adverse written comments by December 16, 2013. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective January 13, 2014.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 13, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: September 16, 2013.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATON OF IMPLEMETATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 52.1870 is amended by adding paragraph (c)(159) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(159) On August November 15, 2010, Ohio submitted revisions to Ohio Administrative Code Chapter 3745–14, Rules 3745–14–01 and 3745–14–06. The revisions sunset NO_X Budget Trading Program rules for units subject to CAIR NO_X Ozone Season Trading Program rules.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rule 3745–14–01 ''Definitions and general provisions.'', effective October 18, 2010.

(B) Ohio Administrative Code Rule 3745–14–06 ''The NOx allowance tracking system.'', effective October 18, 2010.

(C) October 8, 2010, ''Director's Final Findings and Orders'', signed by Chris Korleski, Director, Ohio Environmental Protection Agency.

[FR Doc. 2013–27142 Filed 11–13–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2013–0114; 30120–1113–0000–C4]

RIN 1018–AZ90

Endangered and Threatened Wildlife and Plants; Technical Corrections for Kirtland's Warbler

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Direct final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the revised taxonomy of *Dendroica kirtlandii* (Kirtland's warbler) under the Endangered Species Act of 1973, as amended (Act). We are revising the List of Endangered and Threatened Wildlife to reflect the scientifically accepted taxonomy and nomenclature of this species. We revise the scientific name of the species as follows: *Setophaga kirtlandii* (= *D. kirtlandii*).

DATES: This rule is effective February 12, 2014 without further action, unless significant adverse comment is received by January 13, 2014. If significant adverse comment is received, we will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R3–ES–2013–0114.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R3–ES–2013–0114; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

See Public Comments in **SUPPLEMENTARY INFORMATION** for more information about submitting comments.

FOR FURTHER INFORMATION CONTACT: Barbara Hosler, Endangered Species Coordinator, U.S. Fish and Wildlife Service, Ecological Services Field Office, 2651 Coolidge Road, East Lansing, Michigan 44823; telephone 517–351–6326. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8337 for TTY (telephone typewriter or teletypewriter) assistance.

SUPPLEMENTARY INFORMATION:

Purpose of This Rule

The purpose of our direct final rule is to notify the public that we are revising the List of Endangered and Threatened Wildlife to reflect the scientifically accepted taxonomy and nomenclature of one bird species listed under section 4 of the Act (16 U.S.C. 1531 *et seq.*). The change to the List of Endangered and Threatened Wildlife (50 CFR 17.11(h)) reflects the most recently accepted scientific name in accordance with 50 CFR 17.11(b).

We are publishing this rule without a prior proposal because this is a noncontroversial action that, in the best interest of the regulated public, should be undertaken in as timely a manner as possible. This rule will be effective, as published in this document, on the effective date specified in **DATES**, unless we receive significant adverse comments on or before the comment due date specified in **DATES**. Significant adverse comments are comments that provide strong justification as to why our rule should not be adopted or why it should be changed.

If we receive significant adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date, and we will engage in the normal rulemaking process to promulgate these changes to 50 CFR 17.11.

Public Comments

You may submit your comments and materials regarding our direct final rule by one of the methods listed in **ADDRESSES**. Please include sufficient information with your comment that allows us to verify any scientific or commercial information you include.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us. Before including your address, phone number, email address, or other personal information in your comment, you should be aware that your entire comment—including your personal indentifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this direct final rule, will be available for public inspection on the Internet at *http://www.regulations.gov* or by appointment, during normal business hours at the U.S. Fish and Wildlife Service location listed above in **FOR FURTHER INFORMATION CONTACT**.

Background

Section 17.11(b) of title 50 of the Code of Federal Regulations (CFR) requires us to use the most recently accepted scientific name of any species that we have determined to be an endangered or threatened species. Using the best available scientific information, our direct final rule documents a taxonomic change (scientific name) to Kirtland's warbler (50 CFR 17.11(h)). The basis for the taxonomic change is supported by published studies in peer-reviewed journals. We revise the scientific name of this species under section 4 of the Act (16 U.S.C. 1531 *et seq.*) as follows: *Setophaga kirtlandii* (= *D. kirtlandii*). We make this change to the List of Endangered and Threatened Wildlife (50 CFR 17.11(h)) to reflect the most recently accepted scientific name in accordance with 50 CFR 17.11(b).

Taxonomic Classification

Setophaga kirtlandii

The scientific name change of *Setophaga kirtlandii* (Kirtland's warbler) from *Dendroica kirtlandii* is supported by phylogenetic analyses of sequences of mitochondrial and nuclear DNA (Lovette et al. 2010), which indicated that all species formerly placed in *Dendroica,* as well as the hooded warbler *(Wilsonia citrine),* the northern parula *(Parula Americana),* and the tropical parula *(Parula pitiayumi),* form a clade with the American redstart *(Setophaga ruticilla).* The American Ornithologists Union Committee on Classification and Nomenclature—North and Middle America recognized that the generic name, *Setophaga,* had priority for this clade, renamed the Kirtland's warbler as *Setophaga kirtlandii,* and placed the species between the American redstart and the Cape May warbler *(Setophaga tigrina)* (Chesser et al. 2011). This taxonomic change is included in our most recent 5-year review for the species (USFWS 2012, p. 15). This species will continue to be listed as endangered, and no other aspect of the entry for this species in 50 CFR 17.11(h) will change as a result of this rule.

Required Determinations

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare environmental assessments or environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted under section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (43 FR 49244).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To help us to revise this rule, your comments should be as specific as possible. For example, you should tell us the paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of the referenced materials is available upon request at *http://www.regulations.gov* at Docket No. FWS–R3–ES–2013–0114 or from the U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16. U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, by revising the entry for ''Warbler (wood), Kirtland's'' under Birds to read as set forth below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
Warbler (wood), Kirtland's.	*Setophaga kirtlandii (=Dendroica kirtlandii).*	U.S.A. (principally MI), Canada, West Indies—Bahama Islands.	Entire	E	1, 3	NA	NA
*	*	*	*	*	*	*	

* * * * *

Dated: November 1, 2013.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–27297 Filed 11–13–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100812345–2142–03]

RIN 0648–XC871

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2013 Commercial Accountability Measure and Closure for South Atlantic Blue Runner

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for the commercial sector for blue runner in the exclusive economic zone (EEZ) of the South Atlantic. Commercial landings for blue runner, as estimated by the Science and Research Director, are projected to reach the commercial annual catch limit (ACL) on November 14, 2013. Therefore, NMFS closes the commercial sector for blue runner on November 14, 2013, at 12:01 a.m., local time, for the remainder of the 2013 fishing year, through December 31, 2013. This action is necessary to protect the blue runner resource in the South Atlantic.

DATES: This rule is effective 12:01 a.m., local time, November 14, 2013, until 12:01 a.m., local time, January 1, 2014.

FOR FURTHER INFORMATION CONTACT: Catherine Hayslip, telephone: 727–824–5305, email: *Catherine.Hayslip@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes blue runner and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial ACL for blue runner in the South Atlantic is 177,506 lb (80,515 kg), round weight, as specified in 50 CFR 622.193(s)(1)(i).

In accordance with regulations at 50 CFR 622.193(s)(1)(i), NMFS is required to close the commercial sector for blue runner when the commercial ACL for blue runner has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial ACL for South Atlantic blue runner is projected to be reached on November 14, 2013. Accordingly, the commercial sector for South Atlantic blue runner is closed effective 12:01 a.m., local time, November 14, 2013, until 12:01 a.m., local time, January 1, 2014.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having blue runner onboard must have landed and bartered, traded, or sold such blue runner prior to 12:01 a.m., local time, November 14, 2013. During this commercial closure, the sale or purchase and harvest or possession of blue runner taken from the EEZ is prohibited. In accordance with regulations at 50 CFR 622.193(s)(1)(i), for a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the bag and possession limit for blue runner would apply regardless of where the fish are harvested, *i.e.,* in state or Federal waters.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of South Atlantic blue runner and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(s)(1)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close the commercial sector for blue runner constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the blue runner resource. The capacity of the fishing fleet allows for rapid harvest of the ACL and prior notice and opportunity for public comment would result in a harvest well in excess of the established commercial ACL.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 8, 2013.

Kelly Denit,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–27242 Filed 11–8–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120924488–3671–02]

RIN 0648–XC966

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2013 Commercial Accountability Measure and Closure for South Atlantic Gag

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for the commercial sector for gag in the exclusive economic zone (EEZ) of the South Atlantic. Commercial landings for gag, as estimated by the Science Research Director, have reached the commercial annual catch limit (ACL). Therefore, NMFS closes the commercial sector for gag on November 13, 2013, for the remainder of the 2013 fishing year, through December 31, 2013. This action is necessary to prevent overfishing of the South Atlantic gag resource.

DATES: This rule is effective 12:01 a.m., local time, November 13, 2013, until 12:01 a.m., local time, January 1, 2014.

FOR FURTHER INFORMATION CONTACT: Catherine Hayslip, telephone: 727–824–5305, email: *Catherine.Hayslip@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic, which includes gag, is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial ACL (commercial quota) for gag in the South Atlantic is 326,722 lb (148,199 kg), gutted weight, for the current fishing year, as specified in § 622.190(a)(7).

In accordance with regulations at § 622.193(c)(1), NMFS is required to close the commercial sector for gag when the commercial ACL (commercial quota) has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial ACL (commercial quota) for South Atlantic gag has been met. Accordingly, the commercial sector for South Atlantic gag is closed effective 12:01 a.m., local time, November 13, 2013, until 12:01 a.m., local time, January 1, 2014. The recreational sector will continue to remain open until December 31, 2013.

Additionally, a seasonal closure is in place for the recreational and commercial sectors for gag from January through April each fishing year as specified in § 622.183(b)(1). During the seasonal closure for the recreational and commercial sectors for gag from January through April each fishing year, no person may fish for, harvest, or possess in or from the South Atlantic EEZ any gag. Therefore, the commercial harvest of gag will not commence until May 1, 2014.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having gag onboard must have landed and bartered, traded, or sold such gag prior to 12:01 a.m., local time, November 13, 2013. During this commercial closure, the bag limit and possession limits specified in § 622.187(b)(2)(i) and (c)(1), respectively, apply to all harvest or possession of gag in or from the South Atlantic EEZ, and the sale or purchase of gag taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of gag that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, November 13, 2013, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial permit for the South Atlantic snapper-grouper fishery has been issued, the sale and purchase provisions of the commercial closure for gag apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.190(c)(1).

In addition, for a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, the provisions of this closure apply in the South Atlantic, regardless of where such fish are harvested, *i.e.,* in state or Federal waters as specified in § 622.190(c)(1)(ii).

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of South Atlantic gag and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under § 622.193(c)(1) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close the commercial sector for gag constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect gag since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial ACL (commercial quota).

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 8, 2013.

Kelly Denit,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–27243 Filed 11–8–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 121018563–3148–02]

RIN 0648–XC977

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole for Vessels Participating in the BSAI Trawl Limited Access Fishery in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for vessels participating in the BSAI trawl yellowfin sole fishery in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2013 allocation of yellowfin sole total allowable catch for vessels participating in the BSAI trawl limited access fishery in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 10, 2013, through 2400 hrs, A.l.t., December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2013 allocation of yellowfin sole for vessels participating in the BSAI trawl limited access fishery in the BSAI is 34,868 metric tons (mt) as established by the final 2013 and 2014 harvest specifications for groundfish in the BSAI (78 FR 13813, March 1, 2013). In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2013 allocation of yellowfin sole for vessels participating in the BSAI trawl limited access fishery in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 33,868 mt, and is setting aside the remaining 1,000 mt as incidental catch. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for yellowfin sole for vessels participating in the BSAI trawl limited access fishery in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for yellowfin sole by vessels fishing in the BSAI trawl limited access fishery in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 7, 2013.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 8, 2013.

Kelly Denit,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–27239 Filed 11–8–13; 4:15 pm]

BILLING CODE 3510–22–P

Federal Register
Vol. 78, No. 220
Thursday, November 14, 2013

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1260, 1273, and 1274

RIN 2700–AE06

Removal of Procedures for Closeout of Grants and Cooperative Agreements

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: NASA is proposing to remove from its regulation agency procedures for closeout of grants and cooperative agreements. Simultaneous with removal of the closeout procedures from the regulation, NASA will issue non-regulatory closeout procedures.

DATES: Interested parties should submit comments to NASA at the address identified below on or before January 13, 2014 to be considered in formulation of the final rule.

ADDRESSES: Interested parties may submit comments, identified by RIN 2700–AE06, via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments may also be submitted to Leigh Pomponio (Mail Stop 2P77), NASA Headquarters, Office of Procurement, Contract Management Division, Washington, DC 20546. Comments may also be submitted by email to: *leigh.pomponio@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Leigh Pomponio, NASA Headquarters, Office of Procurement, Contract Management Division (Room 2P77); Telephone: (202) 358–0592; Email: *leigh.pomponio@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Several decades ago, the Agency published the NASA Grant and Cooperative Handbook, codifying all agency policy, practices and procedures related to grants and cooperative agreements at 14 CFR parts 1260, 1273, and 1274. NASA was not required to publish them, but did so as a matter of agency practices. In retrospect, NASA's Grant and Cooperative Agreement Handbook contains internal agency operating procedures that do not have a significant impact on the general public or grant and cooperative agreement recipients and are also not regulatory in nature. Because internal operating procedures are not regulatory and should not be in the regulation, NASA is beginning an effort to remove agency internal policy, practices, and procedures from the regulation that do not have an impact on the public. As each part is considered for removal from the regulation, NASA will publish it in the **Federal Register** for comment. The public's comments will be considered in the final rule This rule covers NASA's closeout procedures that provide internal guidance to NASA grant officers and project officers and will be the first in a series of internal operating procedures which NASA is deregulating.

Consistent with regulatory guidance, including Executive Orders 12866 and 13563, agencies should only issue regulations that are required by law, are necessary to interpret the law, or are made necessary by compelling public need. NASA's internal operating policy, practices, and procedures do not meet the standard for regulatory implementation. In accordance with Executive Order 13563 efforts to improve regulations and regulatory review, retrospective analysis of existing rules, agencies were also encouraged to perform retrospective analysis, reviewing existing regulation for outmoded, ineffective, insufficient, or excessively burdensome requirements, and to modify, streamline, expand, or repeal such regulation, as appropriate. Therefore, the Agency is hereby deleting, from the regulation at 14 CFR parts 1260, 1273, and 1274, internal closeout procedures that impose no burden and have no significant impact on grant and cooperative agreement recipients. The administrative policy, practices, and procedures by which NASA employees close out grants and cooperative agreements do not impact grant and cooperative agreement recipients and are not subject to the formal rulemaking process, and public comment is not required. Nonetheless, to promote transparency of process, simultaneous with the removal from the regulation, NASA will issue non-regulatory grant and cooperative agreement closeout procedures which will be publically posted on NASA's Web site at: *https://prod.nais.nasa.gov/pub/pub_library/grcover.htm.*

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

NASA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this proposed rule does not impose any additional requirements on small entities and, more importantly, the proposed rule serves to deregulate internal agency operating procedures which will eliminate unnecessary regulation.

IV. Paperwork Reduction Act

The Paper Reduction Act (Pub. L. 104–13) is not applicable because the removal of the closeout procedures does not require the submission of any information by recipients that requires the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 14 CFR Parts 1260, 1273, and 1274

Colleges and universities, Business and industry, Grant programs, Grants administration, Cooperative agreements, State and local governments, Non-profit organizations, Commercial firms, Recipients, Closeout procedures, Recipient reporting.

Ronald Poussard,

Acting Assistant Administrator for Procurement.

Accordingly, 14 CFR parts 1260, 1273, and 1274 are proposed to be amended as follows:

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

■ 1. The authority citation for 14 CFR part 1260 is revised to read as follows:

Authority: 51 U.S.C. 20113(e), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301, *et seq.*), and 2 CFR Part 215 (formerly OMB Circular No. A–110).

§ 1260.77 [Removed and Reserved]

■ 2. Section 1260.77 is removed and reserved.

PART 1273—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

■ 3. The authority citation for 14 CFR part 1273 is revised to read as follows:

Authority: 51 U.S.C. 20113(e), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301, *et seq.*), and OMB Circular A–102.

§§ 1273.50 and 1273.51 [Removed and Reserved]

■ 4. Sections 1273.50 and 1273.51 are removed and reserved.

PART 1274—COOPERATIVE AGREEMENTS WITH COMMERCIAL FIRMS

■ 5. The authority citation for 14 CFR part 1274 is revised to read as follows:

Authority: 51 U.S.C. 20113(e), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301, *et seq.*).

§§ 1274.803 and 1274.804 [Removed and Reserved]

■ 6. Sections 1274.803 and 1274.804 are removed and reserved.

[FR Doc. 2013–27234 Filed 11–13–13; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1260 and 1274

RIN 2700–AE11

Removal of Procedures for Delegation of Administration of Grants and Cooperative Agreements

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: NASA is proposing to remove from its regulation agency procedures for the delegation of administration of grants and cooperative agreements. Simultaneous with the removal of the delegation of administration procedures from the regulation, NASA will issue non-regulatory delegation of administration procedures.

DATES: Interested parties should submit comments to NASA at the address identified below on or before January 13, 2014 to be considered in formulation of the final rule.

ADDRESSES: Interested parties may submit comments, identified by RIN 2700- AE11, via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments may also be submitted to Leigh Pomponio (Mail Stop 2P77), NASA Headquarters, Office of Procurement, Contract Management Division, Washington, DC 20546. Comments may also be submitted by email to: *leigh.pomponio@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Leigh Pomponio, NASA Headquarters, Office of Procurement, Contract Management Division (Room 2P77); Telephone: (202) 358–0592; email: *leigh.pomponio@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Several decades ago, the Agency published the NASA Grant and Cooperative Handbook, codifying all agency policy, practices and procedures related to grants and cooperative agreements at 14 CFR parts 1260, 1273, and 1274. NASA was not required to publish them, but did so as a matter of agency practices. In retrospect, NASA's Grant and Cooperative Agreement Handbook contains internal Agency operating procedures that do not have a significant impact on the general public or grant and cooperative agreement recipients and, therefore, are also not regulatory in nature. Because internal operating procedures are not regulatory and should not be in the regulation, NASA is beginning an effort to remove agency internal policy, practices, and procedures from the regulation that do not have an impact on the public. As each non-regulatory part is considered for removal from the regulation, NASA will publish it in the **Federal Register** for comment. The public's comments will be considered in the final rule.

This rule covers NASA's delegation of administration procedures. These procedures provide internal guidance to NASA grant officers and project officers and will be one in a series of internal operating procedures which NASA is deregulating.

Consistent with regulatory guidance, including Executive Orders 12866 and 13563, agencies should only issue regulations that are required by law, are necessary to interpret the law, or are made necessary by compelling public need. NASA's internal operating procedures do not meet the standard for regulatory implementation. In accordance with Executive Order 13563, efforts to improve regulations and regulatory review, retrospective analysis of existing rules, agencies also are encouraged to perform retrospective analysis, reviewing existing regulation for outmoded, ineffective, insufficient, or excessively burdensome requirements, and to modify, streamline, expand, or repeal such regulation, as appropriate. Therefore, the Agency is hereby deleting, from the regulation, at 14 CFR parts 1260, 1273, and 1274, internal delegation of administration procedures that impose no burden and have no significant impact on grant and cooperative agreement recipients. The policy, practices and procedures by which NASA employees delegate the administration of grants and cooperative agreements are not subject to the formal rulemaking process, and public comment is not required. Nonetheless, to promote transparency of process, simultaneous with the removal from the regulation, NASA will issue non-regulatory grant and cooperative agreement delegation of authority procedures which will be publically posted on NASA's Web site at *https://prod.nais.nasa.gov/pub/pub_library/grcover.htm.*

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

NASA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the proposed rule does not impose any additional requirements on small entities and, more importantly, the proposed rule serves to deregulate internal agency operating procedures which will eliminate unnecessary regulation.

IV. Paperwork Reduction Act

The Paper Reduction Act (Pub. L. 104–13) is not applicable because the removal of the delegation of administration procedures does not require the submission of any information by recipients that requires the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 14 CFR Parts 1260 and 1274

Colleges and universities, Business and industry, Grant programs, Grants administration, Cooperative agreements, State and local governments, Non-profit organizations, Commercial firms, Recipients, Delegation of administration, Property administration, Plant clearance, Indirect cost rates, Cognizant agency, Recipient reporting.

Ronald Poussard,

Acting Assistant Administrator for Procurement.

Accordingly, 14 CFR parts 1260 and 1274 are proposed to be amended as follows:

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

■ 1. The authority citation for 14 CFR part 1260 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and OMB Circular No. A–110.

§ 1260.70 [Removed and Reserved]

■ 2. Section 1260.70 is removed and reserved.

PART 1274—COOPERATIVE AGREEMENTS WITH COMMERCIAL FIRMS

■ 3. The authority citation for 14 CFR part 1274 continues to read as follows:

Authority: 31 U.S.C. 6301 to 6308; 42 U.S.C. 2451 *et seq.*

§ 1274.301 [Removed and Reserved]

■ 4. Section 1274.301 is removed and reserved.

[FR Doc. 2013–27232 Filed 11–13–13; 8:45 am]

BILLING CODE 7510–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0997; FRL–9901–37–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Ohio NO_X SIP Call Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 15, 2010, Ohio EPA submitted to EPA revisions to Ohio OAC 3745–14. EPA is proposing to approve these revisions under the Clean Air Act, which allows for Ohio's Clean Air Interstate Rule (CAIR) NO_X Ozone Season Trading Program rules to supersede Ohio's nitrogen oxides (NO_X) State Implementation Plan (SIP) Call Budget Trading Program rules, but leave other requirements of the NO_X SIP Call in place for units not covered by CAIR.

DATES: Comments must be received on or before December 16, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0997, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *Arra.Sarah@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register,** EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register.**

Dated: September 16, 2013.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2013–27144 Filed 11–13–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0407; FRL–9902–54–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Removal of the Regulation for the National Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the

Commonwealth of Virginia that serves to remove from the SIP Virginia's repealed regulation for the National Low Emission Vehicle (NLEV) program. Virginia repealed its regulation in December 2011, because the Virginia NLEV program regulation had by then expired and was superseded by more stringent federal Tier 2 passenger car and light-duty truck standards, which were promulgated by EPA on February 10, 2000. More stringent federal Tier 2 vehicle emission standards were implemented, on a phased-in basis, between model years 2004 and 2006, taking the place of the NLEV program. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by December 16, 2013.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0407 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2013–0407, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2013–0407. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814–2176, or by email at *rehn.brian@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, also titled ''Removal of the Regulation for the National Low Emission Vehicle Program,'' which is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: September 30, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2013–27028 Filed 11–13–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2013–0046; FRL–9902–91-Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Amendments to Vehicle Inspection and Maintenance Program for Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a state implementation plan (SIP) revision submitted by the Illinois Environmental Protection Agency (IEPA) on November 29, 2012, concerning the state's vehicle inspection and maintenance (I/M) program in the Chicago and Metro-East St. Louis ozone nonattainment areas in Illinois. The revision amends I/M program requirements in the active control measures portion of the ozone SIP to reflect changes that have been implemented at the state level since EPA fully approved the I/M program on February 22, 1999. The submittal also includes a demonstration under section 110(l) of the Clean Air Act (CAA) addressing lost emission reductions associated with the program changes.

DATES: Comments must be received on or before December 16, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2013–0046, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312)692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The

Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2013–0046. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. We recommend that you telephone Francisco J. Acevedo, Mobile Source Program Manager, at (312)886–6061 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:
Francisco J. Acevedo, Mobile Source Program Manager, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)886–6061, *acevedo.francisco@epa.gov.*

SUPPLEMENTARY INFORMATION:
Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period.

II. Background

The general purpose of motor vehicle I/M programs is to reduce emissions from in-use motor vehicles in need of repairs and thereby contribute to state and local efforts to improve air quality and to attain the national ambient air quality standards (NAAQS).

Illinois has operated an enhanced I/M program in both the Chicago and Metro-East St. Louis ozone nonattainment areas since February 1999. The program is presently operating in Cook, DuPage and Lake Counties and portions of McHenry, Kane, Will and Kendall Counties in the Chicago ozone nonattainment area and in portions of Madison, St. Clair and Monroe Counties in the Metro-East St. Louis ozone nonattainment area. The program was authorized by the Illinois Vehicle Emissions Inspection Law (VEIL) of 1995 (625 ILCS 5/13B). EPA fully approved Illinois's enhanced I/M program into the SIP on February 22, 1999, (64 FR 8517) including the program's legal authority and administrative program standards and procedures found in 35 Ill. Adm. Code 240 and 276. Initially, all vehicles were inspected by measuring tailpipe emission levels. As of February 1, 2007, the program dropped tailpipe testing entirely and inspected all vehicles by scanning the on-board diagnostics (OBD) systems. This change was the result of statutory changes outlined in the VEIL of 2005, as amended, 625 ILCS 5/13C.

III. What changes have been made to the Illinois I/M program?

The Illinois I/M SIP revision submitted on November 29, 2012, reflects several changes to the approved program. The most significant changes to the Illinois I/M program took effect beginning on February 2007 and include:

- The elimination of the IM240 transient mode exhaust test for all vehicles beginning February 1, 2007.
- The elimination of the evaporative system integrity (gas cap pressure) test for all OBD compliant vehicles beginning February 1, 2007.
- The replacement of the computer-matching enforcement mechanism with a registration denial based system beginning January 1, 2008.
- The elimination of the steady-state idle exhaust and evaporative integrity (gas cap pressure) testing for all vehicles beginning February 1, 2012.
- The exemption of pre-2007 model year (MY) heavy-duty vehicles (HDVs) with gross vehicle weight rating (GVWR) between 8,501 and 14,000 pounds beginning February 1, 2012.
- The exemption of all HDVs with a GVWR greater than 14,000 pounds as of February 1, 2012.
- The requirement of OBD pass/fail testing for all 2007 and newer OBD-compliant HDVs.

In addition to the changes discussed above, the November 29, 2012, submittal included a number of minor revisions to the program that do not have a significant impact on overall program operations or the emissions reductions associated with it. A full list of the regulatory changes submitted by Illinois for EPA approval includes:

• VEIL of 2005, as amended, 625 ILCS 5/13C (Public Act 94–526 enacted on August 10, 2005; Public Act 94–848 enacted on June 9, 2006; Public Act 97–106, enacted on July 14, 2011).

• Revisions to 35 Ill. Adm. Code 240 (R11–19 effective March 18, 2011 (35 Ill. Reg. 5552 (April 1, 2011)); R12–12 effective February 1, 2012 (36 Ill. Reg. 1066 (January 27, 2012)).

• Revisions to 35 Ill. Adm. Code 276 effective June 28, 2011 (35 Ill. Reg. 11268) and January 30, 2012 (36 Ill. Reg. 2257).

To support the changes outlined above, the revision also included a summary of the MOVES2010a modeling inputs used to calculate program benefits; a demonstration for meeting the modeling requirements for EPA's alternate low enhanced I/M performance standard; and a section 110(l) demonstration that includes offset emission credits. Full copies of the SIP revision are located in EPA's docket.

IV. What is EPA's analysis of the State's submittal?

a. Substantive I/M Requirements

EPA's requirements for basic and enhanced I/M programs are found in 40 CFR part 51, subpart S. The I/M SIP revision submitted by Illinois must be consistent with these requirements and must meet EPA's requirements for enforceability and section 110(l) requirements of the CAA. The most important aspects of I/M affected by the submitted revisions to the Illinois I/M program include network type changes, vehicle coverage and exemptions, test procedures and standards, test equipment, waivers and compliance, and the performance standard evaluation.

1. Network Type and Program Evaluation—40 CFR 51.353

Under 40 CFR 51.353, basic and enhanced I/M programs can be centralized, decentralized, or a hybrid of the two at the state's discretion, but must be demonstrated to achieve the same (or better) level of emission reduction as the applicable performance standard described in either 40 CFR 51.351 or 40 CFR 51.352. The revised Illinois I/M program consists of a hybrid network which includes a combination of centralized test-only stations and decentralized, appointment-only, test and repair stations. Provision and maintenance of all test equipment, operation of data management services, waiver analysis, and inspector training, is handled by the state's contractor, Applus+ Technologies, Inc. All tests, regardless of station type, are conducted using the same test equipment and fraud prevention techniques. Vehicles in the Chicago and Metro-East St. Louis areas required to comply with the I/M program are tested biennially by the contractor at either centralized test-only stations or decentralized test and repair stations. The Illinois I/M program is conducted under the legal authority of the VEIL of 2005. The submittal includes provisions for ongoing program evaluation to satisfy the requirements of 40 CFR 51.353. In addition, the state has committed to submit to EPA annual reports that meet the requirements of 40 CFR 51.353 and 40 CFR 51.366. This part of the submittal continues to meet the requirements of 40 CFR 51.353 of the Federal I/M regulation.

2. Vehicle Coverage—40 CFR 51.356

Under 40 CFR 51.356, the performance standard for enhanced I/M programs (including alternate low enhanced programs) assumes coverage of all MY 1968 and later light duty vehicles (LDVs) and light duty trucks (LDTs) up to 8,500 pounds GVWR, and includes vehicles operating on all fuel types. Subject vehicles include vehicles registered or required to be registered within the I/M program area boundaries, and fleets primarily operated within the I/M program area boundaries and belonging to the covered model years and vehicle classes. Under EPA regulations, other levels of coverage may be approved if the necessary emission reductions are achieved. The Illinois I/M program requires all 1996 and newer MY LDVs, LDTs, and OBD compliant HDVs registered in the Chicago or Metro-East St. Louis ozone nonattainment area to be subject to the OBD inspection. The legal authority to enforce the vehicle coverage requirement in Illinois is provided by the VEIL of 2005. The rules implemented to enforce vehicle coverage are contained in the emissions standards adopted by the Illinois Pollution Control Board (35 Ill. Adm. Code 240), and the procedural rules adopted by IEPA (35 Ill. Adm. Code 276). As described in section IV.b below, EPA concludes that the state has demonstrated that it meets the alternate low enhanced performance standards with the revised program changes. Thus, the changes in vehicle coverage under the revised requirements are acceptable under 40 CFR 51.356.

3. Test Procedures—Standards—40 CFR 51.357

Under 40 CFR 51.357, I/M programs must establish and implement written test procedures and pass/fail standards for each model year and vehicle type. Under the revised requirements, Illinois establishes OBD as the primary testing method and eliminates the previously established idle and transient tailpipe testing methods. In addition, the revised requirements eliminate the evaporative emission test also known as the ''gas cap test'', which was previously required but is no longer necessary with OBD technology. The Illinois I/M program submittal contains detailed procedures for connecting to the OBD system, information on readiness codes for OBD tests, and pass/fail standards for OBD equipped vehicles. Updated test procedures are contained in 35 Ill. Adm. Code 276 and applicable emission standards are contained in 35 Ill. Adm. Code 240. This part of the submittal meets the requirements of 40 CFR 51.357 and 40 CFR 51.358 of the Federal I/M regulation.

4. Test Equipment—40 CFR 51.358

Computerized test systems are required for performing any measurement on subject vehicles. The Federal I/M regulation requires that the state SIP submittal include written technical specifications for all test equipment used in the program. The specifications must describe the analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures. As mentioned before, the revised changes repeal references in the requirements relating to idle and transient tailpipe testing methods, including emission equipment specifications and inspection requirements retaining the requirements and specifications for OBD testing. All test stations, whether they are centralized test-only stations, or decentralized test and repair stations, are required to use the same test equipment and data management systems as provided by the contractor.[1] Requirements for the entire test system and vehicle inspection report are contained in the Illinois I/M program contract with Applus+ Technologies, Inc. The Illinois I/M program submittal contains detailed technical specifications for program test equipment that mirror EPA's requirements and guidance. This part of the submittal continues to meet the

[1] The contractor's license plate recognition system is not required at low-volume decentralized test and repair stations.

requirements of 40 CFR 51.358 of the Federal I/M regulation.

5. Quality Control—40 CFR 51.359

Section 3.3.3.22 of Illinois I/M program contract with Applus+ Technologies, Inc., as well as 35 Ill. Adm. Code 276, Subpart F, directs IEPA and the contractor to ensure quality and reliability. The results of the ongoing quality assurance program and program evaluations are incorporated into the annual report submitted to EPA under 40 CFR 51.366. This part of the submittal continues to meet the requirements of 40 CFR 51.359 of the Federal I/M regulation.

6. Waivers and Compliance Via Diagnostic Inspection—40 CFR 51.360

The Federal I/M regulation allows for the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards. The waiver requirements for Illinois are specified in 35 Ill. Adm. Code 276, Subpart D. In addition to waivers, the I/M program allows motorists to comply if they meet the requirements for an economic hardship extension, if their vehicle is located outside of the test area, or if the vehicle has complied with another jurisdiction's testing requirement. Legal authority for the issuance of waivers in the Illinois I/M program is contained in the VEIL of 2005. Specifically, Sections 625 ILCS 5/13C–15 and 5/13C–30 provide the criteria that must be met before a vehicle that has failed a vehicle emissions retest can qualify for a waiver, economic hardship extension, outside of affected counties annual exemption, or reciprocity emission compliance certificate. In addition, 35 Ill. Adm. Code 276, Subpart D, provides the procedures to be followed in the issuance of a waiver, economic hardship extension, or outside of affected counties annual exemption. Finally, 35 Ill. Adm. Code 276, Subpart J, provides the requirements for the issuance of an emissions compliance certificate under reciprocity with other states or jurisdictions. This part of the submittal continues to meet the requirements of 40 CFR 51.360.

7. Motorist Compliance Enforcement—40 CFR 51.361 and Motorist Compliance Enforcement Program Oversight—40 CFR 51.362

Under 40 CFR 51.361, compliance must be ensured through the denial of motor vehicle registration in enhanced I/M programs unless an exception for use of an existing alternative is approved. The enforcement mechanism for the Illinois I/M program changed from a computer-matching system to a vehicle registration denial based system on January 1, 2008. Sections 625 ILCS 5/13C–15 and 5/13C–55 of the VEIL of 2005 specifically require that the owner of a vehicle subject to inspection have proof of compliance from IEPA in order to obtain or renew a vehicle registration for a subject vehicle. As part of this process, IEPA and the Illinois Secretary of State maintain a level of motorist enforcement necessary to ensure a compliance rate of no less than 96 percent of subject vehicles. This part of the submittal continues to meet the requirements of 40 CFR 51.361 and 40 CFR 51.362 of the Federal I/M regulation.

b. Performance Evaluation

As part of the November 29, 2012, I/M SIP revision, IEPA provided an updated performance evaluation using the EPA's motor vehicle emissions simulator model, MOVES2010a.[2] The updated performance evaluation included a summary report outlining the modeling results and full modeling input files, output data files, and run specifications for the MOVES2010a evaluation. The purpose of the updated performance evaluation is to demonstrate that the Illinois I/M program, as amended, would continue to meet the Federal enhanced I/M performance standard in both the Chicago and Metro-East St. Louis ozone nonattainment areas in Illinois. The results of IEPA's analysis are summarized in Tables 1 and 2 below, which show that the emissions reductions achieved by the Illinois I/M program, as amended, meet or exceed those achieved under the performance standards. The amended Illinois I/M program thus continues to achieve greater emissions reductions than the Federal model program because the Illinois I/M program includes elements that go beyond Federal I/M requirements.

TABLE 1—SUMMARY OF RESULTS OF IEPA'S ALTERNATIVE LOW ENHANCED PERFORMANCE MODELING FOR CHICAGO NONATTAINMENT AREA

[Grams per mile]

Program type	VOC[1]	NO_X[2]
Alternative Low Enhanced I/M Performance Standard ..	0.37	1.29
Illinois 2012 I/M Program	0.37	1.24

[1] Volatile organic compound.
[2] Oxides of nitrogen.

TABLE 2—SUMMARY OF RESULTS OF IEPA'S ALTERNATIVE LOW ENHANCED PERFORMANCE MODELING FOR METRO-EAST ST. LOUIS NONATTAINMENT AREA

[Grams per mile]

Program type	VOC	NO_X
Alternative Low Enhanced I/M Performance Standard ..	0.46	1.50
Illinois 2012 I/M Program	[1] 0.47	1.45

[1] Value is within +/−0.02 grams per mile margin for error allowed for by EPA.

Based on our review of the I/M SIP revision, EPA finds IEPA's performance standard evaluation and use of the alternate low enhanced I/M performance standard to be acceptable. EPA also finds that the Illinois I/M program, as amended, meets or exceeds the alternate low enhanced performance standard in both the Chicago and Metro-East St. Louis nonattainment areas as required under 40 CFR 51.351.

c. Demonstrating Noninterference With Attainment and Maintenance Under CAA Section 110(l)

Revisions to SIP-approved control measures must meet the requirements of CAA section 110(l) to be approved by EPA. Section 110(l) states:

> The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

EPA interprets section 110(l) to apply to all requirements of the CAA and to all areas of the country, whether attainment, nonattainment, unclassifiable, or maintenance for one or more of the six criteria pollutants. EPA also interprets section 110(l) to require a demonstration addressing all pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision. In the absence of an attainment demonstration, to demonstrate no interference with any

[2] EPA announced the release of MOVES2010 in March 2010 (75 FR 9411). EPA subsequently released two minor model revisions: MOVES2010a in September 2010 and MOVES2010b in April 2012. Both of these minor revisions enhance model performance and do not significantly affect the criteria pollutant emissions results from MOVES2010.

applicable NAAQS or requirement of the CAA under section 110(l), EPA believes it is appropriate to allow states to substitute equivalent emissions reductions to compensate for any change to a SIP approved program, as long as actual emissions in the air are not increased. ''Equivalent'' emissions reductions mean reductions which are equal to or greater than those reductions achieved by the control measure approved in the active portion of the SIP. In order to show that compensating emissions reductions are equivalent, modeling or adequate justification must be provided. The compensating, equivalent reductions must represent actual, new emissions reductions achieved in a contemporaneous time frame to the change of the existing SIP control measure, in order to preserve the status quo level of emission in the air. In addition to being contemporaneous, the equivalent emissions reductions must also be permanent, enforceable, quantifiable, and surplus to be approved into the SIP.

The Illinois I/M SIP revision includes a 110(l) demonstration that uses equivalent emissions reductions to compensate for emission reduction losses resulting from changes to the February 22, 1999, SIP approved I/M program in the Chicago and Metro-East St. Louis ozone nonattainment areas in Illinois. The submittal indicates that IEPA used the latest version of EPA's motor vehicle emissions model program, MOVES2010a, to estimate the emissions effects of the program changes. Based on our review of the information provided, EPA finds that IEPA used reasonable methods and appropriate models in estimating the emissions effects of the program changes. IEPA's MOVES modeling shows that the changes to the Illinois I/M program result in fewer reductions than would have otherwise been obtained from the I/M program originally approved in the SIP by EPA on February 22, 1999. Tables 3 and 4 below summarize IEPA's emissions calculations comparing the revised I/M program to the SIP approved I/M program in units of tons per day (tpd) and highlight the emissions increases that need to be addressed as part of the 110(l) demonstration.

TABLE 3—SIP I/M PROGRAM VS. REVISED I/M PROGRAM IN THE CHICAGO OZONE NONATTAINMENT AREA

[tpd]

Year	SIP I/M program		Revised I/M program		Emissions increase	
	VOC	NO_X	VOC	NO_X	VOC	NO_X
2007	138.44	462.33	146.08	476.28	7.65	13.95
2009	108.57	374.35	113.76	383.86	5.19	9.51
2012	75.42	255.38	80.27	260.22	4.85	4.84
2015	56.56	186.63	59.99	189.59	3.43	2.96
2025	39.64	113.83	40.06	114.13	0.42	0.31

TABLE 4—SIP I/M PROGRAM VS. REVISED I/M PROGRAM IN THE METRO-EAST ST. LOUIS OZONE NONATTAINMENT AREA

[tpd]

Year	SIP I/M program		Revised I/M program		Emissions increase	
	VOC	NO_X	VOC	NO_X	VOC	NO_X
2007	15.94	52.65	17.03	54.74	1.09	2.09
2009	12.76	42.20	13.59	43.69	0.83	1.49
2012	9.86	31.15	10.80	32.25	0.94	1.09
2015	7.62	23.20	8.36	23.98	0.75	0.78
2025	4.91	13.29	4.95	13.31	0.05	0.02

The revised Illinois I/M program produces fewer reductions of VOC and NO_X emissions which are contributors to the formation of ground-level ozone and fine particular matter ($PM_{2.5}$). Thus, the increase in VOC and NO_X needs to be offset with equivalent (or greater) emissions reductions from another control measures in order to demonstrate non-interference with the 8-hour ozone and $PM_{2.5}$ NAAQS. Although the program also results in fewer reductions of carbon monoxide (CO) emissions, substitute CO emissions reductions are not needed for this demonstration, because both areas in Illinois are attaining the CO NAAQS and CO levels in both areas are well below the standard. IEPA has determined that it is unlikely that the amendments to the Illinois I/M program will interfere with either areas' ability to continue to attain the CO NAAQS.

To address the projected loss of VOC and NO_X emission reductions, IEPA reviewed its records of permitted emissions sources in both nonattainment areas in Illinois and identified those sources that have ceased operation since 2002. In the Chicago nonattainment area, IEPA identified 1,168 facilities with permitted VOC emissions and 687 facilities with permitted NO_X emissions that have permanently closed and have expired permits that have been revoked. In the Metro-East St. Louis nonattainment area, IEPA identified 82 facilities with permitted VOC emissions and 39 facilities with permitted NO_X emissions that have permanently closed and have expired permits that have been revoked. The expiration and revocation of these sources' permits allows the state to use the emission credits associated with them for other purposes under the SIP and makes such reductions permanent and enforceable. IEPA review of emissions from shutdown facilities shows cumulative reductions of 50.32 tpd of VOC and 121.29 tpd of NO_X in the Chicago area in 2012 and 1.97 tpd of VOC and 1.74 tpd of NO_X in the Metro-East St. Louis area in 2012.

Tables 5 and 6 below compare the increases in VOC and NO_X emissions from the revised I/M program to the cumulative reductions in VOC and NO_X emissions from facility shutdowns. Table 5 shows that emission offsets for both VOC and NO_X exceed the increase in emissions resulting from the revised I/M program in the Chicago nonattainment area from 2007 through 2012. Table 6 shows that emission offsets for VOC exceed the increase in emissions resulting from the revised I/M program in the Metro-East St. Louis nonattainment area from 2007 through 2012. However, in 2007 and 2008, increases in NO_X from the revised I/M program exceeded the offsets of NO_X from shutdown facilities in the Metro-East St. Louis nonattainment area.

TABLE 5—NO_X AND VOC EMISSIONS FROM CLOSED FACILITIES IN CHICAGO NONATTAINMENT AREA

[tpd]

Chicago nonattainment area				
Year	I/M program change emissions increase (VOC)	Cumulative facility shutdown emissions reduction (VOC)	I/M program change emissions increase (NO_X)	Cumulative facility shutdown emissions reduction (NO_X)
2007	7.65	33.16	13.95	100.71
2008	6.15	39.96	11.22	109.33
2009	5.19	45.00	9.51	117.95
2010	4.28	48.11	7.54	120.58
2011	3.60	49.30	6.29	121.24
2012	4.85	50.32	4.84	121.29

TABLE 6—NO_X AND VOC EMISSIONS FROM CLOSED FACILITIES IN METRO-EAST ST. LOUIS NONATTAINMENT AREA

[tpd]

Metro-East St. Louis nonattainment area				
Year	I/M program change emissions increase (VOC	Cumulative facility shutdown emissions reduction (VOC)	I/M program change emissions increase (NO_X)	Cumulative facility shutdown emissions reduction (NO_X)
2007	1.09	1.64	2.09	1.39
2008	0.94	1.70	1.80	1.49
2009	0.83	1.83	1.49	1.52
2010	0.75	1.85	1.41	1.56
2011	0.68	1.94	1.28	1.71
2012	0.94	1.97	1.09	1.74

EPA policy allows for substitution between VOC and NO_X emissions in its guidance on reasonable further progress. This guidance recommends that states assume, as an approximation, that equivalent percent changes in the area's inventory for the respective pollutant yield an equivalent change in ozone levels. For example, decreasing area NO_X emissions by 3 percent would have the same effect as decreasing area VOC emissions by 3 percent. Stated another way, if an area has twice as many tons of NO_X emissions as VOC emissions, then 2 tons of NO_X emissions would be assumed to have the same effect on ozone as 1 ton of VOC emissions. Following this approach, IEPA used a 1 VOC to 2.04 NO_X conversion ratio for the Metro-East St. Louis area.

Table 7 below summarizes IEPA's I/M emissions make-up demonstration for the Metro-East St. Louis area and takes into consideration the VOC to NO_X substitution approach discussed above. Based on the use of permanent, enforceable, contemporaneous, surplus emissions reductions achieved through the shutdown of permitted emissions sources, EPA believes that the revisions to the Illinois I/M program do not interfere with both areas' ability to demonstrate compliance with the 8-hour ozone and $PM_{2.5}$ NAAQS.

TABLE 7—METRO-EAST ST. LOUIS AREA COMPARISON OF NO_X EMISSIONS SHORTFALL TO EXCESS VOC REDUCTIONS APPLYING VOC TO NO_X SUBSTITUTION POLICY

[tpd]

Year	NO_X emissions shortfall	Cumulative facility shutdown excess VOC emissions reductions	Excess VOC emissions using the VOC to NO_X emissions ratio (1:2.04)
2007	0.70	0.55	1.12
2008	0.31	0.76	1.55

EPA also examined whether the amendments to the approved I/M program in Illinois have interfered with attainment of other air quality standards. The Illinois I/M program was implemented to address only the ozone NAAQS and EPA has no reason to believe that the amendments to the approved I/M program have caused or will cause the nonattainment of the NAAQS for CO, lead, nitrogen dioxide, or sulfur dioxide. The Metro-East St. Louis area is designated as nonattainment for the $PM_{2.5}$ NAAQS and as discussed before, NO_X is a precursor to $PM_{2.5}$ formation. However, as demonstrated above, permanent, enforceable, contemporaneous, surplus emissions reductions achieved through the shutdown of permitted VOC and NO_X emissions sources have offset the minor increase in NO_X emissions resulting from the change to the I/M program. Therefore, the changes to the I/M program do not interfere with attainment of the $PM_{2.5}$ NAAQS. In addition, EPA believes that the amendments to the approved I/M program in Illinois will not interfere with the ability of the Chicago and Metro-East St. Louis ozone nonattainment areas to meet any other CAA requirement.

Based on the above discussion and the state's 100(l) demonstration, EPA believes that the changes to the Illinois I/M program will not interfere with attainment or maintenance of any of the NAAQS in either the Chicago and Metro-East St. Louis nonattainment areas and would not interfere with any other applicable requirement of the CAA, and thus, are approvable under CAA section 110(l).

V. What action is EPA proposing to take?

EPA is proposing to approve the revisions to the Illinois ozone SIP submitted on November 29, 2012, concerning the I/M program in the Chicago and Metro-East St. Louis ozone nonattainment areas in Illinois. EPA finds that the revisions meet all applicable requirements and will not interfere with reasonable further progress or attainment of any of the NAAQS.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: November 1, 2013.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2013–27276 Filed 11–13–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 13–236; FCC 13–123]

National Television Multiple Ownership Rule

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice commences a proceeding to consider elimination of the so-called UHF discount in the Commission's national television multiple ownership rule. Currently, the national television ownership rule prohibits a single entity from owning television stations that, in the aggregate, reach more than 39 percent of the total television households in the nation. It thus appears that the DTV transition has rendered the UHF discount obsolete and it should be eliminated. This Notice seeks comment on that tentative conclusion. It also tentatively decides, in the event that the UHF discount is eliminated, to grandfather existing television station combinations that would exceed the 39 percent national audience reach cap in the absence of the UHF discount and seeks comment on that proposal. Finally, it seeks comment on whether a VHF discount should be adopted, as it appears that under current conditions VHF channels may be technically inferior to UHF channels for the propagation of digital television signals.

DATES: The Commission must receive written comments on or before December 16, 2013 and reply comments on or before January 13, 2014.

ADDRESSES: You may submit comments, identified by MB Docket No. 13–236; FCC 13–123, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/*. Follow the instructions for submitting comments.
- *Mail:* U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554. Commercial overnight mail (other than U.S. Postal Service Express Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- *Hand or Messenger Delivery:* 445 12th St. SW., Room TW–A325, Washington, DC 20554.
- *People With Disabilities:* Contact the FCC to request reasonable

accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202)–418–0530 or TTY: (202)–418–0432.

For detailed instructions for submitting comments, additional information on the rulemaking process, and where to find materials available for inspection, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Brendan Holland, Industry Analysis Division, Media Bureau, *Brendan.Holland@fcc.gov,* (202) 418–2757, or Johanna Thomas, Industry Analysis Division, Media Bureau, *Johanna.Thomas@fcc.gov,* (202) 418–7551.

SUPPLEMENTARY INFORMATION: This *Notice of Proposed Rulemaking,* (NPRM) in MB Docket No. 13–236; FCC 13–123, was adopted and released on September 26, 2013. The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., in person at 445 12th Street SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via email at *FCC@BCPIWEB.com*. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities or by sending an email to *FCC504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at (202) 418–0530, TTY (202) 418–0432. This document is also available on the Commission's Web site at *http://fcc.gov*.

I. Introduction

1. This NPRM commences a proceeding to consider elimination of the so-called UHF discount in the Commission's national television multiple ownership rule. Currently, the national television ownership rule prohibits a single entity from owning television stations that, in the aggregate, reach more than 39 percent of the total television households in the nation. In determining compliance with the 39 percent national audience reach cap, the rule provides that television stations broadcasting in the UHF spectrum will be attributed with only 50 percent of the television households in their Designated Market Areas (DMAs); this is termed the UHF discount. The discount was adopted in 1985, in recognition of the technical inferiority of UHF signals as compared with VHF signals in analog television broadcasting and was intended to mitigate the competitive disadvantage that UHF stations experienced in comparison to VHF stations because of their weaker signals and smaller audience reach. However, there is a serious question whether this justification for the UHF discount continues to exist in light of the transition of full-power television stations to digital broadcasting (the DTV transition) completed in June 2009. While UHF channels were technically inferior to VHF channels for purposes of transmitting analog television signals, experience since the DTV transition suggests that, far from being inferior, they may actually be superior to VHF when it comes to the transmission of digital television signals, as discussed below.

2. It thus appears that the DTV transition has rendered the UHF discount obsolete and it should be eliminated. We seek comment on that tentative conclusion. We also tentatively decide, in the event that we eliminate the UHF discount, to grandfather existing television station combinations that would exceed the 39 percent national audience reach cap in the absence of the UHF discount and seek comment on that proposal. Finally, we seek comment on whether a VHF discount should be adopted, as it appears that under current conditions VHF channels may be technically inferior to UHF channels for the propagation of digital television signals.

II. Background

3. In 1985, the Commission imposed the national audience restriction together with the UHF discount. To protect localism, diversity, and competition, the Commission determined that both a station limit, restricting the total number of broadcast stations a single entity could own, and a nationwide audience reach limit were necessary. Thus, in addition to reaffirming its prior decision to limit the number of AM, FM, and television broadcast stations that a single entity could own, operate, or control to twelve stations in each service, the Commission revised the national television multiple ownership rule to prohibit a single entity from owning television stations that collectively exceeded 25 percent of the total nationwide audience.

4. At that time, the Commission recognized the ''inherent physical limitations'' of the UHF band. It concluded that the technical limitations of UHF stations should be reflected in the implementation of the national audience cap. The Commission specifically found that the delivery of television signals was more difficult in the UHF band because the strength of UHF television signals decreased more rapidly with distance in comparison to the signals of stations broadcasting in the VHF band, resulting in significantly smaller coverage area and audience reach. To reflect the coverage limitations of the UHF band, the Commission determined that the licensee of a UHF station should be attributed with only 50 percent of the television households in its market area for purposes of the national audience restriction. The Commission concluded that this UHF discount reflected the historical concern for the viability of UHF television and provided a measure of the actual handicap of UHF voices, which was consistent with traditional diversity objectives.

5. In the Telecommunications Act of 1996 (1996 Act), Congress directed the Commission to increase the national audience reach cap from 25 percent to 35 percent and to eliminate the rule restricting an entity to owning no more than twelve television stations nationwide. The 1996 Act did not direct the Commission to amend the UHF discount.

6. The Commission subsequently reaffirmed the 35 percent national audience reach cap in its *1998 Biennial Review Order*. The Commission reasoned that it was premature to revise the audience cap because it had not had sufficient time to fully observe the effects of raising the cap from 25 to 35 percent. The Commission retained the UHF discount, finding that it remained in the public interest. But the Commission indicated that the UHF discount would not likely be necessary after the anticipated transition to digital television and stated that a NPRM would be issued in the future to propose phasing out the discount once the digital transition was complete.

7. The Commission reexamined the issue in its *2002 Biennial Review Order.* At that time, the Commission found that the national audience reach cap, while not necessary to promote competition and diversity, nonetheless remained necessary to promote localism. Further, the Commission decided that an increase in the cap to 45 percent was justified. The Commission concluded that a 45 percent cap would strike an appropriate balance, by permitting some growth for the big four network owners and allowing them to achieve greater economies of scale, while at the same time ensuring that the networks could not reach a larger national audience than their affiliates collectively. The Commission also found that setting the

cap at 45 percent was consistent with past congressional action to increase the ownership limit by 10 percentage points.

8. At the same time, the Commission upheld the UHF discount once again, finding that there continued to be a disparity between the household reach of UHF and VHF signals, which diminished the ability of UHF stations to compete effectively. The Commission surmised, however, that the digital [television] transition [would] largely eliminate the technical basis for the UHF discount because UHF and VHF signals [would] be substantially equalized. Accordingly, the Commission decided to sunset application of the UHF discount for stations owned by the top four broadcast networks (*i.e.,* ABC, CBS, NBC, and Fox) as the digital transition was completed on a market-by-market basis. The Commission noted that the sunset would apply unless it made an affirmative determination that the UHF discount continued to serve the public interest beyond the digital transition. The Commission indicated further that it would review the status of the UHF discount in a subsequent biennial review and decide at that time whether to extend the sunset to all other networks and station group owners.

9. Subsequently, Congress superseded the Commission's modification of the national audience reach cap in the *2002 Biennial Review Order,* including the increased 45 percent limit and the sunset of the UHF discount. The 2004 Consolidated Appropriations Act directed the Commission to modify its ownership rules to revise the national audience reach cap from 35 percent to 39 percent. Further, it amended section 202(h) of the 1996 Act to require a quadrennial review of the Commission's broadcast ownership rules rather than a biennial review, but specifically excluded any rules relating to the 39 percent national audience reach limitation from the quadrennial review.

10. Prior to the enactment of the 2004 Consolidated Appropriations Act, several parties had appealed the Commission's *2002 Biennial Review Order* to the U.S. Court of Appeals for the Third Circuit (Third Circuit). In June 2004, the Third Circuit issued a decision in which it found that the challenges to the Commission's actions with respect to the national audience reach cap and the UHF discount were moot as a result of Congress's action. The court determined that the Commission was under a statutory directive, following the 2004 Consolidated Appropriations Act, to modify the national audience reach cap to 39 percent, and that challenges to the Commission's decision to raise the cap to 45 percent therefore were no longer justiciable. The court found that challenges to the Commission's decision to retain the UHF discount were likewise eliminated from the litigation by the language in the 2004 Consolidated Appropriations Act, which insulated the UHF discount rule from the Commission's quadrennial (previously biennial) review of its media ownership rules. At the same time, the court indicated that its decision did not foreclose the Commission's consideration of its regulation defining the UHF discount in a rulemaking outside the context of section 202(h). The court concluded that, barring congressional intervention, the Commission may decide, in the first instance, the scope of its authority to modify or eliminate the UHF discount outside the context of section 202(h).

11. In July 2006, the Commission issued a Further Notice of Proposed Rule Making as part of its 2006 quadrennial review of the media ownership rules. Among other things, the *Further Notice* sought comment on the Third Circuit's holding with respect to the UHF discount rule and whether the Commission should retain, modify, or eliminate the UHF discount. In February 2008, the Commission concluded in the *2006 Quadrennial Review Order* that the UHF discount is insulated from review under section 202(h) as a result of the 2004 Consolidated Appropriations Act. But the Commission noted the Third Circuit's 2004 decision had left it to the Commission to decide the scope of its authority to modify or eliminate the UHF discount outside the context of section 202(h). Accordingly, the Commission indicated that it would address the petitions, comments, and replies filed with respect to the alteration, retention, or elimination of the UHF discount in a separate proceeding.

12. Since June 13, 2009, all full-power television stations have broadcast their over-the-air signals using only digital technology. The DTV transition has enabled broadcasters to provide multiple programming choices and enhanced capabilities to consumers. Yet the transition has posed more challenges for VHF channels than UHF channels, because VHF spectrum has proven to have characteristics that make it less desirable for providing digital television service. For instance, nearby electrical devices tend to emit noise that can cause interference to DTV signals within the VHF band, creating reception difficulties in urban areas even a short distance from the TV transmitter. The reception of VHF signals also requires physically larger antennas compared to UHF signals, making VHF signals less well suited for mobile applications. For these reasons among others, television broadcasters generally have faced greater challenges providing consistent reception on VHF signals than UHF signals in the digital environment.

III. Discussion

A. Authority To Modify the UHF Discount

13. We tentatively conclude that the Commission has the authority to modify the national television ownership rule, including the authority to revise or eliminate the UHF discount. Specifically, we tentatively conclude that the 2004 Consolidated Appropriations Act does not preclude the Commission from revisiting the national television ownership rule or the UHF discount contained therein, in a proceeding separate from the quadrennial reviews of the broadcast ownership rules pursuant to section 202(h) of the 1996 Act. Notably, in the 2004 Consolidated Appropriations Act, Congress directed the Commission to revise its rules to reflect a 39 percent audience reach cap. Congress did not directly establish that limitation by statute or amend the Communications Act of 1934 (the Communications Act or Act) to address the subject of national television ownership. Further, as the court in *Prometheus I* recognized, while Congress excluded the national television ownership rule from the quadrennial review requirement under section 202(h), it did not foreclose Commission action to review or modify the rule in a separate context.

14. In addition, the Communications Act provides the Commission with the statutory authority to revisit its rules and revise or eliminate them if it concludes such action is appropriate. Section 4(i) of the Act authorizes the agency to ''perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.'' Similarly, section 303(r) provides that the FCC may ''[m]ake such rules and regulations . . . not inconsistent with this law, as may be necessary to carry out the provisions of this Act . . .''. Indeed, the courts have held that the Commission has an affirmative obligation to reexamine its rules over time. For instance, in *Bechtel* v. *FCC,* the court observed that changes in factual and legal circumstances may impose upon the agency an obligation to reconsider a settled policy or explain its failure to do

so. In the rulemaking context, for example, it is settled law that an agency may be forced to reexamine its approach if a significant factual predicate of a prior decision has been removed, which is precisely the case here.

15. For these reasons, we believe the Commission retains the authority to modify both the national audience reach restriction and the UHF discount, provided such action is undertaken in a rulemaking proceeding separate from the Commission's quadrennial review of the broadcast ownership rules pursuant to section 202(h). We seek comment on our tentative conclusion and analysis. Does our tentative conclusion appropriately interpret the 2004 Consolidated Appropriations Act and the Third Circuit's guidance in its 2004 decision? Is there additional statutory guidance or case law that supports or undermines our conclusion?

B. Elimination of the UHF Discount

16. The Commission has recognized for more than a decade that the underlying basis for the UHF discount would likely disappear following the transition to digital television. As discussed above, even as the Commission determined in both the *1998 Biennial Review Order* and the *2002 Biennial Review Order* that the UHF discount was still necessary, it anticipated that the DTV transition would largely eliminate the technical basis for the UHF discount. The Commission found that the digital transition would substantially equalize UHF and VHF signals, and, thus, it decided to sunset the discount for UHF stations owned by the top four broadcast networks (*i.e.,* CBS, NBC, ABC, and Fox). As discussed above, the sunset provisions adopted by the Commission were superseded by Congress's action in the 2004 Consolidated Appropriations Act. Nevertheless, the DTV transition has borne out the Commission's expectation. Digital UHF stations do not suffer from the same comparative technical deficiencies *vis-à-vis* VHF facilities that characterized analog UHF stations.

17. The Commission has acknowledged that UHF spectrum is now highly desirable in light of its superior propagation characteristics for digital television, and that the disparity between UHF and VHF channels has if anything been reversed. In fact, following the DTV transition, some stations that initially elected to operate on a VHF channel have sought to relocate to a UHF channel to resolve technical difficulties encountered in broadcasting on VHF. The Commission has explored engineering options to increase the utility of VHF spectrum for digital television purposes. Furthermore, the Commission recently determined that annual regulatory fees for UHF and VHF stations will be combined into one fee category beginning in Fiscal Year 2014, eliminating a distinction based on the historical disadvantages of UHF. Today, rather than offsetting an actual service limitation or reflecting a disparity in signal coverage, the UHF discount appears only to confer a factually unwarranted benefit on owners of UHF television stations. If left in place, the UHF discount could undermine the 39 percent national audience reach cap on the false predicate that UHF stations do not reach equivalent audiences to VHF stations.

18. Based on these findings, we tentatively conclude that the historical justification for the UHF discount no longer exists and the rule is therefore obsolete. We accordingly propose that the UHF discount should be eliminated from the national television multiple ownership rule.

19. We seek comment on this proposal. In particular, does the UHF discount still serve the public interest? Does the discount promote market entry? Does it promote competition among broadcast networks? Are we correct in concluding that the technical limitations for UHF spectrum that existed for analog operations are not present in a digital environment? If so, are there other public policy justifications for maintaining the UHF discount despite the fact that the historical technical inferiority of UHF spectrum for television broadcasting no longer exists? Is any disparity between the broadcast coverage of UHF and VHF channels less important today than in 1985 given that many consumers receive local broadcast stations via a multichannel video programming distributor (MVPD) and not over-the-air? Are there any other market conditions that merit our consideration with regard to the UHF discount? Is there any factual basis to maintain the UHF discount in the current environment? What are the costs and benefits of eliminating the UHF discount?

C. Existing Broadcast Station Combinations

20. We recognize that the elimination of the UHF discount would impact the calculation of nationwide audience reach for broadcast station groups with UHF stations. We believe, however, that only a small number of broadcast station ownership groups have combinations that approach the current 39 percent ownership nationwide cap and that might exceed the cap if the UHF discount were eliminated. We therefore propose, in the event that we eliminate the UHF discount, to grandfather broadcast station ownership groups to the extent that they exceed the 39 percent national audience cap solely as a result of the termination of the UHF discount rule as of the date of the release of this NPRM. We also propose to grandfather proposed station combinations that would exceed the 39 percent cap as a result of the elimination of the UHF discount for which an application is pending with the Commission or which have received Commission approval, but are not yet consummated, at that the time this NPRM is released. Further, we propose that any grandfathered ownership combination subsequently sold or transferred would be required to comply with the national ownership cap in existence at the time of the transfer.

21. We seek comment on these issues. Do our proposals serve the public interest? What is the potential impact of our grandfathering proposals on broadcast ownership groups, the broadcast industry, local markets, and consumers? Do our proposals adequately address any potential impact on existing broadcast station ownership groups? Should we consider any specific circumstances in evaluating applications for waiver of the national ownership cap received from grandfathered station groups that enter into subsequent transactions, such as whether the application for waiver seeks to allow a corporate transformation of an existing station group—including a refinancing or restructuring—versus action that would circumvent the proposed rule change? Are there other strategies we should consider or employ to address existing broadcast station ownership groups that would exceed the 39 percent limit if the UHF discount were eliminated? Are there other alternatives we should consider with regard to pending applications? What are the costs and benefits of our grandfathering proposal and any other proposals offered by commenters?

D. VHF Discount

22. As noted above, the Commission has acknowledged that the DTV transition has made UHF spectrum, if anything, more desirable than VHF spectrum for purposes of digital television broadcasting. While the Commission has proposed solutions to VHF reception challenges, it has acknowledged that the options for improving digital television service on VHF channels are limited, especially in the low-VHF band. Unfortunately, it is

often consumers using indoor antennas who tend to face reception difficulties most frequently. For these reasons, some television stations, as previously indicated, have sought to relocate to UHF channels in order to resolve the technical difficulties experienced with their VHF channels.

23. Given the challenges that VHF stations face in delivering digital television signals, we seek comment on whether it would be appropriate at this time to adopt a VHF discount. Could a VHF discount function similarly to the current UHF discount in that only a certain percentage of the television households in a DMA would be attributed to a VHF television station for purposes of calculating a station group's national audience reach? We seek comment on whether a VHF discount is either warranted or advisable at this time. If a VHF discount is advisable, would it be appropriate to attribute to VHF stations only 50 percent of the TV households in their DMA? Would a different percentage be more appropriate? Is a discount more or less important than it was when the UHF discount was adopted in 1985, because many television consumers today receive local broadcast stations via an MVPD rather than over-the-air? Would a VHF discount run the risk of becoming obsolete as a result of market developments, as in the case of the UHF discount? Are there any other market conditions that merit our consideration with regard to a possible VHF discount? In the event that the Commission adopts a VHF discount, should we distinguish between high and low VHF channels? Are there options other than a discount to address the current inferiority of VHF signal propagation for purposes of the national audience reach cap? What are the costs and benefits of imposing a VHF discount and any other proposal offered by commenters?

IV. Procedural Matters

A. Ex Parte Presentations

24. The proceeding this Notice initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Paperwork Reduction Act Analysis

25. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

C. Comment Filing Procedures

26. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/*.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

27. Additional Information: For additional information on this proceeding, please contact Brendan Holland of the Media Bureau, Industry Analysis Division, *Brendan.Holland@fcc.gov*, (202) 418–2757, or Johanna Thomas of the Media Bureau, Industry Analysis Division, *Johanna.Thomas@fcc.gov*, (202) 418–7551.

Initial Regulatory Flexibility Act Analysis

28. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''), the Federal Communications Commission (Commission) has prepared this present Initial Regulatory Flexibility Analysis (''IRFA'') concerning the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (''NPRM''). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will

send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA''). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rule Changes

29. The Commission seeks comment in this NPRM to consider elimination of the so-called ''UHF discount'' in the Commission's national television multiple ownership rule. The national television ownership rule currently prohibits a single entity from owning television stations that, in the aggregate, reach more than 39 percent of the total television households in the nation. The rule provides television stations broadcasting in the UHF spectrum with a discount by attributing those stations with only 50 percent of the television households in their Designated Market Areas (DMAs); this is termed the UHF discount. The UHF discount was adopted in recognition of the technical inferiority of UHF signals in analog television broadcasting and was intended to mitigate the competitive disadvantages that UHF stations experienced in comparison to VHF stations because of their weaker signals and smaller audience reach. However, there is serious question whether this justification for the UHF discount continues to exist in light of the transition of full-power television stations to digital broadcasting (the DTV transition) completed on June 12, 2009. Our experience since the DTV transition suggests that UHF channels may actually be superior to VHF channels when it comes to the transmission of digital television.

30. This NPRM tentatively concludes that the UHF discount is obsolete since the DTV transition and should be eliminated. The Commission seeks comment on this tentative conclusion, as well as on our tentative decision to grandfather existing television station combinations that would exceed the 39 percent national audience reach cap in the absence of the UHF discount. Finally, we seek comment on whether a ''VHF discount'' should be adopted, as it appears that under current conditions VHF channels may be technically inferior to UHF channels for the propagation of digital television signals.

31. Legal Basis

32. The proposed action is authorized under sections 1, 2(a), 4(i), 303(r), 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303(r), 307, 309, and 310.

33. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

34. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small governmental jurisdiction. In addition, the term small business has the same meaning as the term small business concern under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

35. Television Broadcasting. The SBA designates television broadcasting stations with $35.5 million or less in annual receipts as small businesses. Television broadcasting includes establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The Commission estimates that there are 1,386 licensed commercial television stations in the United States. In addition, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database as of June 10, 2013, 1,245 (or about 90 percent) of the estimated 1,386 commercial television stations have revenues of $35.5 million or less and, thus, qualify as small entities under the SBA definition. We therefore estimate that the majority of commercial television broadcasters are small entities. The Commission has also estimated the number of licensed noncommercial educational (NCE) television stations to be 396. These stations are non-profit, and therefore considered to be small entities.

36. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

B. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

37. The NPRM tentatively concludes to modify the national television multiple ownership rule as set forth in paragraph 3 above, which would affect reporting, recordkeeping, or other compliance requirements. The conclusion, if ultimately adopted, would modify several FCC forms and their instructions: (1) FCC Form 301, Application for Construction Permit For Commercial Broadcast Station; (2) FCC Form 314, Application for Consent to Assignment of Broadcast Station Construction Permit or License; and (3) FCC Form 315, Application for Consent to Transfer Control of Corporation Holding Broadcast Station Construction Permit or License. The Commission may have to modify other forms that include in their instructions the media ownership rules or citations to media ownership proceedings, including Form 303-s and Form 323. The impact of these changes will be the same on all entities, and we do not anticipate that compliance will require the expenditure of any additional resources as the proposed modification to the national television multiple ownership rule will not place any additional obligations on small businesses.

C. Steps Taken To Minimize Significant Impact on Small Entities and Significant Alternatives Considered

38. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

39. The tentative conclusions and specific proposals on which the NPRM seeks comments, as set forth in paragraph 3 above, are intended to achieve our public interest goal of competition. By recognizing the technical advancements of the UHF band after the DTV transition, this NPRM seeks to create a regulatory landscape that reflects the current value of UHF spectrum in order to better assess national television ownership figures. Further, this NPRM complies with the President's directive for independent agencies to review their existing regulation to determine whether such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives. As such, our proposed rule seeks to reduce costs on firms generally, including small business entities, by removing outdated regulations. In addition, the grandfathering and VHF discount proposals seek to create a more effective regulatory landscape by addressing current market realities. The NPRM also requests comment on whether any alternatives to the Commission's tentative conclusions or specific proposals exist, which provides small entities with the opportunity to indicate any disagreement with our findings and conclusions.

D. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

40. None.

V. Ordering Clause

41. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2(a), 4(i), 303(r), 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303(r), 307, 309, and 310, this Notice of Proposed rulemaking *is adopted*.

42. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Television; Radio.

Federal Communication Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communication Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

■ 2. Amend § 73.3555 by revising paragraph (e)(2)(i) to read as follows:

§ 73.3555 Multiple ownership.

* * * * *

(e) * * *

(2) * * *

(i) National audience reach means the total number of television households in the Nielsen Designated Market Areas (DMAs) in which the relevant stations are located divided by the total national television households as measured by DMA data at the time of a grant, transfer, or assignment of a license.

* * * * *

[FR Doc. 2013–26004 Filed 11–13–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 130306200–3200–01]

RIN 0648–BD03

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; Amendment 102

AGENCY: National Marine Fisheries Service (NMFS) National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 102 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP), and amend the Individual Fishing Quota Program for the Fixed-Gear Commercial Fisheries for Pacific Halibut and Sablefish in Waters in and off Alaska (IFQ Program). Amendment 102 and its proposed implementing regulations would create a Community Quota Entity (CQE) Program in halibut IFQ regulatory area 4B (Area 4B) and the sablefish Aleutian Islands regulatory area that is similar to the existing CQE Program in the Gulf of Alaska (GOA). Amendment 102 would also allow an eligible community in Area 4B and in the Aleutian Islands to establish a non-profit organization as a CQE to purchase halibut catcher vessel quota share (QS) assigned to Area 4B and sablefish QS assigned to the Aleutian Islands. The CQE could assign the resulting annual halibut and sablefish IFQ to participants according to defined CQE Program elements. An additional proposed revision to the IFQ Program regulations would allow IFQ derived from D share halibut QS to be fished on Category C vessels in Area 4B. These actions are necessary to provide additional fishing opportunities for residents of fishery dependent communities and sustain participation in the halibut and sablefish IFQ fisheries. These actions are intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Northern Pacific Halibut Act of 1982, the BSAI FMP, and other applicable law.

DATES: Submit comments on or before December 16, 2013.

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2013–0048, by any one of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0048,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the Regulatory Impact Review (RIR) for Amendment 102 and the RIR/Initial Regulatory Flexibility Analysis (IRFA) for the regulatory amendment to allow IFQ derived from D share halibut QS to be fished on Category C vessels in Area 4B are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule may be submitted to NMFS at the above address and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Peggy Murphy, (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Regulatory Authority

NMFS proposes regulations to implement Amendment 102 to the BSAI FMP, amend the halibut and sablefish IFQ regulations to allow a CQE Program for halibut and sablefish in the Aleutian Islands, allow IFQ derived from D share halibut QS to be fished on Category C vessels in Area 4B, and describe current CQE QS use caps. The North Pacific Fishery Management Council (Council) recommended and NMFS approved the BSAI FMP in 1982 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*). Regulations implementing the BSAI FMP and general regulations governing groundfish appear at 50 CFR part 679. Fishing for Pacific halibut (*Hippoglossus stenolepis*) is managed by the International Pacific Halibut Commission (IPHC) and the Council under the Northern Pacific Halibut Act of 1982 (Halibut Act). Section 773(c) of the Halibut Act authorizes the Council to develop regulations that are in addition to, and not in conflict with, approved IPHC regulations. Such Council-recommended regulations may be implemented by NMFS only after approval by the Secretary of Commerce.

Background on the IFQ and CQE Programs

IFQ Program

The IFQ Program, a limited access privilege program for the fixed-gear halibut and sablefish (*Anoplopoma fimbria*) fisheries off Alaska, was recommended by the Council in 1992 and approved by NMFS in 1993. Initial implementing rules were published November 9, 1993 (58 FR 59375), and fishing under the IFQ Program began on March 15, 1995. The IFQ Program limits access to the halibut and sablefish fisheries to those persons holding QS in specific management areas. The IFQ Program for the sablefish fishery is implemented by the BSAI FMP and Federal regulations at 50 CFR part 679 under the authority of the Magnuson-Stevens Act. The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 679 under the authority of the Halibut Act. A comprehensive explanation of the IFQ Program can be found in the final rule implementing the program.

The IFQ Program changed the management structure of the fixed-gear halibut and sablefish fishery by issuing QS to qualified persons who owned or leased a vessel that made fixed-gear landings of those species from 1988 to 1990. Halibut QS was issued specific to one of eight IPHC halibut management areas throughout the Bering Sea and Aleutian Islands (BSAI) and GOA, and four vessel categories: Freezer (catcher/processor) category (A share); catcher vessel greater than 60 ft. length overall (LOA) (B share); catcher vessel greater than 35 ft. to 60 ft. LOA (C share); and catcher vessel less than or equal to 35 ft. LOA (D share). Sablefish QS was issued specific to one of six sablefish management areas throughout the BSAI and GOA, and three vessel categories: Freezer (catcher/processor) category (A share); catcher vessel greater than 60 ft. LOA (B share); and catcher vessel less than or equal to 60 ft. LOA (C share). The amount of halibut and sablefish that each QS holder may harvest is calculated annually and issued as IFQ in pounds on an IFQ permit. An IFQ halibut permit authorizes participation in the fixed-gear fishery for Pacific halibut in and off Alaska, and an IFQ sablefish permit authorizes participation in most fixed-gear sablefish fisheries off Alaska. IFQ permits are issued annually to persons holding Pacific halibut and sablefish QS or to those persons who are recipients of IFQ transfers from QS holders.

The IFQ Program was structured to retain the owner-operator nature of the fixed-gear halibut and sablefish fisheries and limit consolidation of QS. The QS may be permanently transferred or leased with several restrictions by type of QS and management area. Only persons who were initially issued B, C, and D share catcher vessel QS, S-type corporations formed by initial issuee individuals, or individuals who qualify as IFQ crew members are allowed to hold or purchase catcher vessel QS. Thus, the IFQ Program restricts holders of catcher vessel QS to individuals and initial recipients. With few exceptions, individual QS holders are required to be on board the vessel to fish the IFQ.

Although the IFQ Program resulted in significant safety and economic benefits for many fishermen, since the inception of the IFQ Program, many residents of Alaska's small, remote, coastal communities who held QS have transferred their QS to non-community residents or moved out of these communities. As a result, the number of resident QS holders has declined substantially in most remote coastal communities throughout Alaska. This transfer of halibut and sablefish QS and the associated fishing effort from the small, remote, coastal communities has limited the ability of residents to locally purchase or lease QS and reduced the diversity of fisheries to which fishermen in these communities have access. The ability of fishermen in these communities to purchase QS or maintain existing QS may be limited by factors shared among and unique to each community. Although the reasons for decreasing QS holdings in a community may vary, the net effect is overall lower participation by residents of these communities in the halibut and sablefish IFQ fisheries. The substantial decline in the number of resident QS holders and the total amount of QS held by residents of small, remote, coastal communities may have aggravated unemployment and related social and economic conditions in those communities.

CQE Program

In 2001, the Council recognized that a number of small, remote, coastal communities, particularly in the GOA, were struggling to remain economically viable. The Council developed the CQE Program to provide these communities with long-term opportunities to access the halibut and sablefish resources. The Council recommended the CQE Program in the GOA as an amendment to the IFQ Program in 2002 (Amendment 66 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP)), and NMFS implemented the program in 2004 (69 FR 23681, April 30, 2004).

The CQE Program allows 45 small, remote, coastal communities in the GOA that met historic participation criteria in the halibut and sablefish fisheries to purchase and hold catcher vessel halibut QS in halibut Areas 2C, 3A, and 3B, and catcher vessel sablefish QS in the GOA. Communities eligible to participate in the CQE Program in the GOA need to meet criteria for geographic location, population size, historic participation in the halibut and sablefish fisheries, and be specifically designated on the list of communities adopted by the Council and included in regulation (see Table 21 to Part 679). Additional detail on these criteria is available in the final rule implementing Amendment 66 (69 FR 23681, April 30, 2004).

The communities are eligible to participate in the CQE Program once they are represented by a CQE, which is a NMFS-approved non-profit organization. The CQE is the holder of the QS and is issued the IFQ annually by NMFS. With certain exceptions, the QS must remain with the CQE. This program structure creates a permanent asset for the community to use. The structure promotes community access to QS to generate participation in, and fishery revenues from, the commercial halibut and sablefish fisheries.

To participate in the CQE Program, an eligible community must first acquire a statement of support from the community governing body, and then form a CQE to represent the community and have that CQE approved by NMFS. After NMFS approval, a CQE may receive catcher vessel QS for the represented community(ies) through NMFS-approved transfers. The eligible communities and the community governing body that recommends the CQE are listed in Table 21 to part 679. Once the CQE holds QS, the CQE can lease the annual IFQ resulting from the CQE-held QS to individual community residents. The CQE Program also promotes QS ownership by individual community residents. Individuals who lease annual IFQ from the CQE could use IFQ revenue to purchase their own QS. The Council believed, and NMFS agrees, that both the CQE and non-CQE-held QS are important in terms of providing community residents fishing access that promotes the economic health of communities.

Current CQE Program regulations include several provisions affecting the use of QS and the annual IFQ by the CQE. Under some provisions, a CQE has the same privileges and is held to the same limitations as individual users. For example, CQE-held QS is subject to the same area use cap that applies to non-CQE-held QS. In other instances, the CQE is subject to less restrictive measures than individual QS holders. For example, the catcher vessel size classes do not apply to QS and the IFQ held by CQEs. In yet other instances, the CQE must operate under more restrictive measures than individual QS holders, in part to protect existing QS holders and preserve entry-level opportunities for fishermen. A comprehensive explanation of these CQE Program provisions can be found in the final rule implementing the CQE program (69 FR 23681, April 30, 2004).

Based on further review by the Council beginning in 2008, the Council determined that three additional GOA communities met the general criteria listed above for inclusion in the CQE Program. In December 2010, the Council recommended explicitly adding these communities to the CQE Program under Amendment 94 to the GOA FMP. In 2013, NMFS implemented regulations for Amendment 94 to the GOA FMP to add these communities to the CQE Program. Additional detail is available in the final rule implementing the regulatory provisions of Amendment 94 and is not repeated here (78 FR 33243, June 4, 2013).

The Council recommended the CQE Program for the GOA, but not for the BSAI. When the CQE Program was initially adopted by the Council, and implemented by NMFS, it was specifically intended to provide opportunities to GOA communities that had a historic dependence on the halibut and sablefish fisheries in the GOA. The Council considered but did not recommend applying the CQE Program to the BSAI because nearly all small, remote, coastal communities located in the BSAI also participate in the Western Alaska Community Development Quota Program (CDQ Program) that is authorized under section 305(i) of the Magnuson-Stevens Act. The CDQ Program allocates a percentage of all BSAI quotas for groundfish, prohibited species, halibut and crab to CDQ groups that represent 65 coastal communities throughout the BSAI. This allocation to the CDQ Program allows the distribution of benefits from that allocation to be shared among the residents of the CDQ Program communities. In contrast, the CQE Program requires communities to purchase halibut and sablefish QS for use by community residents. At the time the Council recommended, and NMFS implemented, the CQE Program for the GOA, communities located in the BSAI did not meet the geographic scope, or intent, of the CQE Program. When the Council was requested to consider implementing a CQE program in the Aleutian Islands, there was no similar request for the Bering Sea. Therefore, the Council did not develop a CQE Program for the Bering Sea.

Proposed Actions

This proposed rule would implement two separate actions: (1) amend the BSAI FMP to implement a revised CQE Program in the Aleutian Islands (Amendment 102); and (2) allow D share halibut QS to be fished on vessels less than or equal to 60 ft. LOA in Area 4B. Only Action 1 would require amending the BSAI FMP. A Notice of Availability of Amendment 102 to the BSAI FMP was published on November 1, 2013 (*78 FR 65602*), with comments on the FMP amendment invited through December 31, 2013. Written comments may address Amendment 102, the proposed rule, or both, but must be received by December 31, 2013, to be considered in the decision to approve or disapprove the FMP amendment.

Action 1: Aleutian Islands CQE Program

Action 1 would amend the BSAI FMP and revise existing halibut and sablefish IFQ Program regulations to allow a designated non-profit organization to purchase and hold catcher vessel QS on behalf of any rural community located adjacent to the coast of the Aleutian Islands (defined in regulations at § 679.2 as the Aleutian Islands Subarea of the BSAI) that meets specific qualification criteria. The proposed action would also amend the BSAI FMP and Federal regulations at §§ 679.2, 679.5, 679.41, 679.42, and Table 21 to part 679 to authorize an Aleutian Islands CQE to purchase a limited amount of Area 4B halibut and Aleutian Islands sablefish QS and lease the resulting IFQ.

The Council initiated an analysis to develop a CQE Program for the Aleutian Islands after receiving a proposal from the Adak Community Development Corporation (ACDC) in January of 2010. Specifically, the ACDC requested that the Council modify the existing CQE Program to allow the ACDC to use revenues generated from its holdings of Western Aleutian Islands golden king crab to purchase Area 4B halibut and Aleutian Islands sablefish QS for use by fishery participants delivering to Adak, AK. Under regulations established for the BSAI Crab Rationalization Program (70 FR 10174, March 2, 2005), the Adak Community Entity is designated (50 CFR 680.2) to receive an exclusive allocation of 10 percent of the total allowable catch issued for Western Aleutian Islands golden king crab (§ 680.40(a)(1)). The ACDC was formed by representatives of the community of

Adak as the Adak Community Entity to promote the development of fishery related resources, infrastructure, and assets for the community of Adak. The purchase of Area 4B halibut and Aleutian Islands sablefish QS would be consistent with those goals.

Since the military station closed on Adak in 1994, the Aleut Corporation and ACDC have invested significant effort into developing Adak as a commercial center and a civilian community with a private sector economy focused on commercial fishing. As part of that strategy, Adak has pursued a broad range of fisheries development opportunities to encourage a resident fishing fleet and delivery to the shoreside processor located in Adak. A CQE could add stability to shoreside processing operations that have been subject to periodic closure. After receiving ACDC's proposal, the Council recognized that there may be opportunity for Adak or other similarly situated communities in the Aleutian Islands to maintain and improve access to commercial halibut and sablefish fisheries through a community QS holding program similar to the GOA CQE Program. In December 2010, the Council initiated an analysis of an FMP and regulatory amendment to form a CQE Program specifically for the Aleutian Islands. In February 2012, the Council recommended establishing a CQE Program in the Aleutian Islands that would be similar to the current CQE Program in the GOA.

The proposed action recommended by the Council complies with the Magnuson-Stevens Act National Standard 8 that requires management programs to ''take into account the importance of fishery resources to fishing communities…in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities'' (16 U.S.C. 1851).

The Council considered comments from the public, NMFS, and the State of Alaska, and incorporated the foundation of the GOA CQE program in developing this proposed action for the Aleutian Islands. As noted earlier, the GOA CQE Program was developed to provide harvest opportunities for small, remote, coastal communities that lacked access to fishery resources. The proposed Aleutian Islands CQE Program is intended to meet that same purpose.

The Council sought to include provisions of the current GOA CQE Program in the proposed Aleutian Islands CQE Program, as the goals of the programs are similar. After reviewing the applicable criteria for the GOA CQE Program, however, the Council found that the proposed Aleutian Islands CQE Program required limited changes from the GOA CQE Program regulations. Therefore, the basic provisions of this proposed action are similar to those described in the final rule implementing the CQE Program for GOA communities (69 FR 23681, April 30, 2004), and as amended by the final rule implementing Amendment 94 to the GOA FMP and associated regulatory amendments (78 FR 33243, June 4, 2013). Additional information on the criteria considered in developing the proposed Aleutian Islands CQE Program is provided in Section 2.6.2 of the RIR prepared for this proposed action (see **ADDRESSES**). The provisions of the proposed Aleutian Islands CQE Program are summarized here.

1. Eligible Community

A potentially eligible community would need to meet all the following criteria to participate in the proposed Aleutian Islands CQE Program: (a) Be located within the Aleutian Islands; (b) not be eligible for the CDQ Program; (c) have a population of more than 20 and less than 1,500 persons based on the 2000 U.S. Census; (d) have direct access to saltwater; (e) lack direct road access to communities with populations of more than 1,500 persons; (f) have historic participation in the halibut and sablefish fisheries; and (g) be specifically designated on a list adopted by the Council and included in regulation (see Table 21 to part 679). These specific criteria for community eligibility, with the exception of criteria (a) and (b), would be identical to those implemented for the GOA CQE Program.

Criterion (a) would exclude communities not located within the Aleutian Islands. All communities other than Adak, Atka, and Attu Station would be excluded.

Criterion (b) would exclude any CDQ communities located in the Aleutian Islands because these communities receive direct allocations of halibut and sablefish catcher vessel QS through their representative CDQ groups. Atka is the only CDQ community in the Aleutian Islands, so it would not be eligible under criterion b) of the proposed Aleutian Islands CQE Program. Therefore, only Adak and Attu Station would still be eligible for consideration under criteria (a) and (b).

Attu Station and Adak would also be eligible under criterion (c). The Council reviewed the population of Attu Station and Adak using both the 2000 U.S. Census, the most recent census data available at the time the CQE Program was implemented, and the more recent U.S. Census data from 2010. Neither Adak nor Attu Station's population was less than 20 or greater than 1,500 persons in the 2000 or the 2010 U.S. Census; therefore, their eligibility for the proposed Aleutian Islands CQE Program would not be affected by the use of 2000 U.S. Census data rather than more recent 2010 U.S. Census data.

Adak and Attu Station Also Meet Criteria (d) and (e)

Criterion (f) would exclude the community of Attu Station. Attu Station is a U.S. Coast Guard station on the northeast coast of Attu Island, at the far western end of the Aleutian Chain. There is no record of any resident of Attu Station meeting the standard for historic participation established under the CQE Program, which requires at least one commercial landing of halibut or sablefish as documented by the State of Alaska Commercial Fisheries Entry Commission (CFEC) during 1980 through 2000. In addition, NMFS has no record of any commercial landings of halibut or sablefish by any resident of Attu Station since 2000. According to CFEC records, several halibut permit holders identified Adak as their city of residence during the period 1980 through 2000, and several of these residents made at least one commercial landing of halibut or sablefish during 1980 through 2000. Therefore, Adak meets the requirements of criterion (f).

Adak meets proposed criteria (a) through (f). In summary, Adak is located in the Aleutian Islands; is not a CDQ community; has a 2000 U.S. Census population of 316 people (and a population of 326 according to the 2010 U.S. Census); has direct access to saltwater; lacks direct road access to communities with a population more than 1,500 persons; and residents of the community have documented historical participation in the commercial halibut and sablefish fisheries.

Criterion (g) specifies that a new CQE-eligible community in the Aleutian Islands would be established in regulation by being added to the existing table of CQE communities in regulation (Table 21 to part 679). This criterion would ensure that if an Aleutian Islands community other than Adak appears to meet the eligibility criteria but is not specifically designated on the list of communities adopted by the Council, then that community would have to apply directly to the Council to be included. In this event, the Council may modify the list of eligible communities adopted by the Council through a regulatory amendment. Under this proposed rule, Table 21 to part 679 would be amended to include Adak as the only eligible Aleutian Islands CQE community.

2. Community Quota Entity

CQE Program regulations at § 679.2 and § 679.41(l) define a CQE as a non-profit organization incorporated under the laws of the State of Alaska for the express purpose of transferring, holding, and managing QS for an eligible community. Adak would be the only eligible community in the proposed Aleutian Islands CQE Program, thus, the provision identifying the non-profit organization that can serve as the CQE for the community of Adak is specific to Adak. This proposed rule would modify the definition of a CQE at § 679.2 to specify that in addition to meeting the eligibility criteria established for CQEs currently defined at § 679.2, an Aleutian Islands CQE would also need to be the non-profit corporation defined at § 680.2 as the Adak Community Entity that is formed for the purpose of holding the allocation of Western Aleutian Islands golden king crab made to Adak under the provisions of § 680.40(a)(1). The current Adak Community Entity is the ACDC. The Council recommended that the entity eligible to hold the Western Aleutian Islands golden king crab allocation (i.e., the Adak Community Entity) would best be suited to serve as the eligible CQE for Adak, because the overall responsibility of the entity is to hold an exclusive fishery allocation for use on behalf of Adak. This responsibility mirrors the responsibility of a non-profit organization that serves as a CQE.

Consistent with the definition of a CQE at § 679.2, an Aleutian Islands CQE would need to meet the three existing requirements that define a CQE. First, the non-profit organization would need to be incorporated after April 10, 2002, the date the Council took final action on the GOA CQE Program. Second, the community represented by the non-profit organization would need to be listed in Table 21 to part 679. Third, the CQE would need to be approved by NMFS to obtain by transfer and hold QS, and to lease IFQ resulting from the QS on behalf of an eligible community (see regulations at § 679.41(l) for the CQE application process).

The ACDC was incorporated after April 10, 2002. Therefore, it would meet the first requirement for a CQE defined at § 679.2. Should the ACDC dissolve, or otherwise cease to be designated as the Adak Community Entity, then a new Adak Community Entity could form to hold the Western Aleutian Islands golden king crab allocation and represent Adak for purposes of the proposed Aleutian Islands CQE Program. This new entity would need to be incorporated after April 10, 2002, to meet the first requirement for a CQE. This proposed rule would amend Table 21 to part 679 to list Adak to meet the second requirement for a CQE, and the Aleutian Islands CQE would need to be approved by NMFS under existing regulations at § 679.41(l)(3) to meet the third requirement.

Consistent with the regulation established for the GOA CQE Program at § 679.41(l)(3), the non-profit organization (i.e., the ACDC) would apply to NMFS for eligibility as a CQE. The application would need to demonstrate proof of support from the community that the non-profit organization is seeking to represent. The specific procedure for the community to demonstrate its support for a CQE is described in the Administrative Oversight section of the preamble. Once an application to become a CQE has been approved, then that CQE would be eligible to receive and hold QS for community members to use as IFQ. With certain exceptions (see ''Transfer and Use Restrictions'' and ''Sale Restrictions'' in this preamble for additional detail), the QS would need to remain with the CQE. NMFS would issue the IFQ annually to the CQE. The CQE could lease IFQ under the mechanisms described in this proposed rule (see ''Transfer and Use Restrictions'' in this preamble for additional detail). Consistent with regulations at § 679.41(l)(2), an Aleutian Islands community could not be represented by more than one CQE.

3. Individual Community Use Caps

Community use caps limit the amount of halibut QS and sablefish QS that each eligible community, as represented by a CQE, may purchase and hold. In the GOA CQE Program, the CQE individual community use cap is limited to an amount of QS equal to the individual IFQ use cap. GOA CQEs are limited to 1 percent of the Area 2C halibut QS and 0.5 percent of the combined Area 2C, 3A, and 3B halibut QS. GOA CQEs also are limited to 1 percent of the Southeast sablefish QS and 1 percent of all combined sablefish areas QS. If the Council were to mirror the approach taken in the GOA in establishing CQE use caps for Area 4B halibut and Aleutian Islands sablefish, then it would have established the same halibut and sablefish use caps for an Aleutian Islands CQE as those in place for an individual QS holder. However, under the existing IFQ Program, an individual QS use cap of 1.5 percent exists for halibut for Area 4 as a whole, and there are no individual QS use caps for Area 4B halibut QS. Similarly for sablefish QS, a 1.0 percent use cap exists for all sablefish areas (BSAI and GOA) as a whole, and there is no individual QS use cap for Aleutian Islands sablefish QS. The Council instead opted to specify use caps for an Aleutian Islands CQE that are applicable to the Area 4B halibut QS and Aleutian Islands sablefish QS.

The Council recommended, and this proposed rule would establish, CQE use caps for halibut and sablefish, respectively, equal to 15 percent of the Area 4B halibut QS pool (1,392,716 QS units) and 15 percent of the Aleutian Islands sablefish QS pool (4,789,874 QS units). This proposed rule would modify regulations at § 679.42(e)(6) and (f)(5) to establish the applicable use caps for the Aleutian Islands CQE. In recommending these use caps the Council considered a range of options to limit the maximum amount of QS an Aleutian Islands CQE could hold (see Section 2.6.2.3 of the RIR for additional detail). The Council recommended limiting QS holdings by the Aleutian Islands CQE, on behalf of Adak, to a use cap that would provide an adequate opportunity for communities to purchase and hold sufficient QS for leasing the resulting IFQ to benefit the community. The Council considered the recommended use cap as not so restrictive as to discourage communities from purchasing and holding QS.

The Council also considered the potential effects on existing QS holders in recommending use caps. The use caps accommodate existing QS holders who are concerned that shifting potential QS holdings to communities could disadvantage individual fishermen by reducing the amount of QS available to them in the QS market. The Council's purpose and need for this proposed action notes that allowing Adak, a non-CDQ community, to purchase Area 4B halibut and Aleutian Islands sablefish QS for lease to eligible fishermen would help minimize adverse economic impacts on this community and help provide for the sustained participation by the community and individuals in the halibut and sablefish IFQ fisheries. Section 2.6.2.3 of the RIR prepared for this proposed action notes that approximately 45 percent of the Aleutian Islands sablefish IFQ and 15 percent of the Area 4B halibut IFQ are not harvested on an annual basis. These data suggest that under the proposed use cap the Aleutian Islands CQE would be able to purchase QS that is not currently being used to yield IFQ by existing participants. Therefore, the Council and NMFS expect potential competition between individual QS holders and the CQE would be limited.

This proposed rule would modify Table 21 to this part and add a regulation at § 679.42(e)(9) to limit the transfer or use of Aleutian Islands sablefish QS by the Aleutian Islands CQE representing the eligible community of Adak. Existing regulations at § 679.42(f)(4) would limit the transfer or use of halibut QS by the Aleutian Islands CQE to the IFQ regulatory area (e.g., Area 4B) designated in Table 21 to this part. These limits support a principal goal of the current GOA and proposed Aleutian Islands CQE Programs to improve the access of residents of the eligible communities to local resources. Therefore, the Council recommended limiting the use of halibut and sablefish QS to those management areas that are adjacent to the CQE eligible community in the Aleutian Islands. Only IFQ regulatory Area 4B, for halibut, and IFQ regulatory area Aleutian Islands, for sablefish, are adjacent to the Aleutian Islands.

4. Cumulative Community Use Cap

This proposed rule would establish a cumulative community use cap that would limit the amount of halibut QS and sablefish QS that all Aleutian Islands CQEs combined could purchase and hold collectively. The Council selected, and NMFS proposes, a 15 percent cumulative use cap, the largest of the three caps the Council considered, because the halibut and sablefish catch limits are not fully prosecuted in Area 4B and the Aleutian Islands, respectively. Under the proposed action, Adak is the only eligible community; therefore, the community use cap of 15 percent of the Area 4B halibut QS pool (1,392,716 QS units) and 15 percent of the Aleutian Islands sablefish QS pool (4,789,874 QS units) also would serve as the cumulative community use cap. This provision would limit cumulative community ownership of QS in the Aleutian Islands as an additional measure to reduce the potential increase in QS price that could result if additional new CQEs sought to purchase QS up to their respective communities' use cap(s) in the Aleutian Islands. Since Adak is the only eligible community at this time, this provision would serve to limit the potential holding of all CQEs should there be future development of small, remote, coastal communities in the Aleutian Islands.

The Council also considered whether it was appropriate to phase in the cumulative community use caps as was done for the GOA CQE Program. Under the GOA CQE program, CQEs are limited to a cumulative community use cap that began as a maximum of 3 percent of the total halibut QS and 3 percent of the total sablefish QS in each GOA IFQ regulatory area. This initial cumulative use cap increased by 3 percent per year for 7 years to a maximum of 21 percent of the total halibut QS pool and 21 percent of the total sablefish QS pool in each GOA IFQ regulatory area effective beginning in 2012. Therefore, all CQEs in the GOA are now subject to the maximum cumulative community use cap. Based on the fact that only one community is eligible under the proposed Aleutian Islands CQE Program, and past experience with the GOA CQE Program indicating that CQEs have not purchased large sums of QS initially, the Council did not recommend a phased-in cumulative use cap.

This proposed rule would modify regulations at § 679.42(e)(6) and (f)(5) to remove regulatory text describing the mechanism for phasing in the use cap for GOA CQE communities that is outdated and no longer applicable. The rule clarifies that GOA CQEs are now subject to a 21 percent use cap for halibut and sablefish QS in the GOA.

5. Transfer and Use Restrictions

The following provisions would establish restrictions on the type of blocked QS that a CQE could purchase; the type of vessel category QS that a CQE could purchase; the permanent transfer of QS from a CQE once QS is held; who can lease IFQ from a CQE; how much IFQ can be used by an individual lessee; and how much IFQ can be used on an individual vessel.

a. Block Limits

Two block provisions would apply to an Aleutian Islands CQE under this proposed rule. The first block provision would allow an Aleutian Islands CQE to purchase both blocked and unblocked Area 4B halibut QS and Aleutian Islands sablefish QS, without restrictions on the size of blocked QS that may be held. Blocked QS are aggregates of small units of QS that were designated as blocks when they were initially issued and that cannot be subdivided upon transfer. Blocked QS typically is less expensive and therefore more attractive to new entrants as an initial investment in the IFQ Program. The existing GOA CQE Program prohibits CQEs from purchasing very small blocks of halibut QS in Areas 2C and 3A. Current regulations also prohibit purchase of small blocks of sablefish QS in the Southeast Outside, West Yakutat, Central GOA, and Western GOA regulatory areas. Prohibitions on the size of QS blocks available to GOA CQEs accommodate the interests of prospective new entrants in those areas. These small blocks of QS are specified at § 679.41(e) as the number of QS units initially issued as blocks that could be combined or ''swept-up'' to form a single block or a ''sweep-up'' limit.

The Council did not recommend, and NMFS is not proposing, restrictions on the size of QS blocks an Aleutian Islands CQE could purchase. The Council declined to recommend block size restrictions after reviewing data from the RIR for proposed Amendment 102 (see Section 2.6.2.4 for additional detail). Only 4 of the 61 blocks of Aleutian Islands sablefish catcher vessel QS equate to a number of QS units that would exceed the Aleutian Islands sweep-up limit. About two-thirds of the blocks of Area 4B halibut QS would exceed the Area 4B sweep-up limit. Therefore, implementing a restriction on the purchase of small sweep-up blocks by an Aleutian Islands CQE would greatly limit an Aleutian Islands CQE from purchasing blocked Aleutian Islands sablefish QS. Much of the blocked QS is issued as small blocks that are less than the sweep-up limit. Similarly, about one-third of the Area 4B blocked halibut QS is issued as blocked QS that is less than the sweep-up limit. Therefore, restricting an Aleutian Islands CQE from purchasing small sweep-up blocks would significantly impact the amount of halibut and sablefish QS available for purchase. In addition, over the most recent period available for analysis (2000 through 2010) approximately 45 percent of the Aleutian Islands sablefish IFQ was harvested and 85 percent of the Area 4B halibut IFQ was harvested on an annual basis. These data suggest that the potential impact on new entrants of allowing an Aleutian Islands CQE to purchase these small sweep-up blocks of QS would be limited because not all QS is being used to harvest halibut and sablefish IFQ currently. Because existing regulations at § 679.41(e)(4) and (5) do not limit the size of Area 4B halibut and Aleutian Islands sablefish QS blocks that a CQE can hold, no change in regulations would be necessary to implement this provision.

The second block provision would limit the number of QS blocks the Aleutian Islands CQE could hold. This limit would be the same as the limit currently applied to a GOA CQE. Under the current GOA CQE Program, each community represented by a CQE is limited to holding, at any point in time, a maximum of 10 blocks of halibut QS and 5 blocks of sablefish QS in each IFQ regulatory area for halibut and sablefish. The Council recommended retaining the current block holding limits applicable to GOA CQEs for an Aleutian Islands CQE because large portions of the QS in the Aleutian Islands are available only in blocked shares. Therefore, an Aleutian Islands CQE could hold 10 blocks of Area 4B halibut QS, and 5 blocks of Aleutian Islands sablefish QS. Limiting the Aleutian Islands CQE to existing unblocked QS would effectively limit the QS available to a small portion of the total QS that is typically higher priced than the more available blocked QS. The proposed limits would provide additional opportunities for an Aleutian Islands CQE to purchase QS beyond those that constrain current individual QS holders. In recommending this provision, the Council balanced the objectives of this new program to promote community access to QS with concerns about protecting the interests of individual new entrants to the fishery. No change to existing regulations at § 679.42(g)(1)(ii) would be necessary to implement this provision.

b. Vessel Category Restrictions

The proposed action would apply to the Aleutian Islands CQE the same regulations on the vessel categories of QS that currently apply to CQEs in Areas 3A and 3B of the GOA (i.e., the Central and Western GOA). Specifically, an Aleutian Islands CQE could purchase and hold all categories of Area 4B halibut catcher vessel QS (B, C, and D share QS), and all categories of Aleutian Islands sablefish catcher vessel QS (B and C share QS). In the GOA CQE Program, those CQEs representing communities in Southeast Alaska (Area 2C) may not hold D share QS. This restriction was intended to limit the potential competition between CQEs and entry level fishermen for D share QS. A greater portion of the total Area 2C QS is issued as D share relative to Areas 3A, 3B, and 4B, and D share QS is more commonly purchased by new participants in Area 2C than in Areas 3A, 3B, and 4B.

As noted in the final rule implementing the GOA CQE Program, the Council and NMFS found no clear evidence demonstrating a potential conflict between the limited number of new IFQ Program entrants and CQEs in Area 3B (69 FR 23681, April 30, 2004). Similarly, the final rule implementing Amendment 94 to the GOA FMP amended the GOA CQE Program to allow CQEs representing communities in Area 3A (i.e., the Central GOA) to hold D share halibut QS based on a subsequent review that did not demonstrate a conflict with opportunities for new entrants (78 FR 33243, June 4, 2013). The Council determined that allowing an Aleutian Islands CQE to hold D share QS would not conflict with new entrants in the Aleutian Islands. Section 2.6.2.4 of the RIR prepared for this proposed action notes that there is little market demand for D share QS in the Aleutian Islands. Approximately 70 percent of the D share halibut QS in Area 4B is not harvested on an annual basis. These factors indicate there is likely to be minimal competition between individuals and an Aleutian Islands CQE for D share QS in the Area 4B halibut QS market. Because existing regulations at § 679.41(g)(5) restrict CQEs from holding D share QS in Area 2C, no changes to the regulations are necessary to implement this provision.

This proposed action would not limit the amount of D share halibut QS that an Aleutian Islands CQE may hold. Under regulations currently applicable to D share QS purchases in Area 3A (Central GOA), GOA CQEs are subject to a cumulative limit on the amount of D share QS holdings equal to the total D share QS that were initially issued to individual residents of Area 3A CQE communities. No such limit applies to GOA CQEs holding D share QS in Area 3B. The Council considered recommending a limit on the amount of D share QS an Aleutian Islands CQE could hold to an amount equal to the total D share QS that were initially issued to individual residents of eligible Aleutian Islands CQE communities. The Council did not limit the amount of D share QS an Aleutian Islands CQE could hold because residents of the only CQE eligible community in the Aleutian Islands (i.e., Adak) were not initially issued any halibut or sablefish QS. At the time the IFQ Program was being developed, Adak was a military installation, and it did not have a civilian population with documented landings during the IFQ Program qualifying years. Therefore, the Council recommended that restrictions on the amount of D share halibut QS a CQE community can hold not apply to an Aleutian Islands CQE. Because existing regulations at § 679.41(g)(5)(iii) restrict CQEs from holding more than a specific amount of D share QS in Area 3A, no changes to the regulations are necessary to implement this provision.

Annually, an Aleutian Islands CQE could transfer the halibut and sablefish IFQ derived from QS. The transferred IFQ would be leased on an annual basis, as is currently the requirement in existing CQE regulations. This proposed rule would allow the IFQ derived from B and C share QS to be fished on any size vessel. This provision is currently applicable to the existing GOA CQE Program. The Council recommended applying this same standard to the Aleutian Islands CQE for the same reasons as those established for the GOA CQE Program: to facilitate the use of the IFQ on the wide range of vessel types fishing in rural communities. Limiting an Aleutian Islands CQE to the vessel category requirements for fishing IFQ derived from the QS it holds could increase demand and price competition for QS among the CQE and other QS holders, particularly for C share QS, because many vessels in the eligible communities tend to be within this size range. Broadening the use of IFQ derived from community-held QS among vessels of various sizes could reduce this potential competition. IFQ derived from CQE-held B and C share catcher vessel QS could be fished from a vessel of any size regardless of the QS vessel category from which the IFQ was derived. This provision would apply only while the QS is held by the CQE. The vessel category requirements for use of the QS would apply once again if the QS is transferred from a CQE to a qualified recipient that was not a CQE. The proposed rule would modify regulations at § 679.42(a)(2)(iii) to specify that Area 4B IFQ derived from B and C share QS held by a CQE could be harvested on a vessel of any length.

Action 2 of this proposed rule would allow Area 4B D share halibut IFQ to be harvested on a vessel equal to or less than 60 ft (18.3 m) LOA. This limitation on the size of vessel that may be used to harvest IFQ derived from D share halibut QS is applicable to both CQE and non-CQE D share QS holders in Area 4B, and is addressed in the section on Action 2 in this preamble.

c. Sale Restrictions

This proposed rule would apply the same regulations for a CQE to transfer QS in the Aleutian Islands as apply to a CQE transfer of QS in the GOA. An Aleutian Islands CQE could only transfer its catcher vessel QS to an individual or initial QS recipient eligible to receive QS under the IFQ Program or to another eligible CQE in the Aleutian Islands CQE Program. An Aleutian Islands CQE could only transfer its QS according to the provisions set forth in the existing IFQ Program regulations at § 679.41(g)(7) and (8). Under this proposed rule, Adak would be the only community eligible to be represented by a CQE in the Aleutian Islands; therefore a CQE representing Adak would only be able to transfer its catcher vessel QS to an individual or initial recipient. An Aleutian Islands CQE could not transfer Area 4B halibut QS or Aleutian Islands sablefish QS to any of the GOA CQEs eligible to hold QS under the GOA CQE Program, because those CQEs are prohibited under existing regulations from purchasing QS outside the GOA. An Aleutian Islands CQE would only be able to transfer QS for one of the following purposes: (1) to generate revenues to sustain, improve, or expand the program; or (2) to liquidate the CQE's QS assets for reasons outside the program. Should an eligible community transfer their QS for purposes not consistent with these purposes, the CQE administrative entity would not be qualified to purchase and hold QS on behalf of that community for a period of 3 years. Thus, implementation of this provision for Aleutian Islands CQEs would mirror transfer provisions for the GOA CQEs.

Regulations at § 679.41(g)(7) provide that a CQE may transfer QS: (1) To generate revenues to provide funds to meet administrative costs for managing the community QS holdings; (2) to generate revenue to improve the ability of residents within the community to participate in the halibut and sablefish IFQ fisheries; (3) to generate revenue to purchase QS to yield IFQ for use by community residents; (4) to dissolve the CQE; or (5) as a result of a court order, operation of law, or as part of a security agreement.

Existing regulations at § 679.41(g)(8) require that if the Regional Administrator determines that a CQE transferred QS for purposes other than to sustain, improve, or expand the opportunities for community residents, then (1) the CQE must divest itself of any remaining QS holdings and will not be eligible to receive QS by transfer for a period of 3 calendar years after the effective date of final agency action on the Regional Administrator's determination; and (2) the Regional Administrator will not approve a CQE to represent the eligible community in whose name the CQE transferred QS for a period of 3 years after the effective date of the final agency action on the Regional Administrator's determination. The 3-year restriction is intended to discourage CQEs from speculating in the QS market or using potential assets to fund other unrelated projects.

These restrictions encourage the CQE community to hold its QS as a long-term asset to provide access to and benefits from fisheries over time. The restrictions provide the CQE some flexibility to respond to unanticipated circumstances and to act in its best interest and the interests of community residents.

Consistent with the current QS transfer approval process for CQEs, under the proposed rule, NMFS would approve the transfer of QS held by an Aleutian Islands CQE on behalf of a community only if the community for which the CQE holds the QS authorizes that transfer. This authorization would need to be in the form of a signature on the Application for Transfer of QS/IFQ to or from a Community Quota Entity (CQE) by an authorized representative of the governing body of the community. The purpose of the authorization is to ensure that the community is fully aware of the transfer, because of the consequences of the restrictions explained above.

Under existing regulations applicable to CQEs, if subsequent information is made available to NMFS that confirms a transfer of QS is made by an Aleutian Islands CQE for reasons other than to sustain, improve, or expand the opportunities for community residents, or to comply with a court order, operation of law, or security agreement, then NMFS will withhold annual IFQ permits on any remaining QS held by the CQE on behalf of that community. NMFS will also disqualify that CQE from holding QS on behalf of that community for 3 calendar years following the year in which final agency action adopting that determination is made.

As under existing regulations applicable to CQEs, NMFS would not impose this restriction on an Aleutian Islands CQE until the CQE had received full administrative due process, including notice of the potential action and the opportunity to be heard. An initial administrative determination (IAD) proposing an adverse action would only become final agency action if the CQE failed to appeal the IAD within 60 days, or upon the effective date of the decision issued by the Office of Administrative Appeals. The procedures for appeal are provided at § 679.43. No regulatory changes are required to implement these existing CQE requirements.

d. Use Restrictions

Consistent with the regulations for the GOA CQE program, this proposed rule would establish limitations on the use of QS and IFQ assigned to an Aleutian Islands CQE. However, this proposed rule would provide some additional flexibility on the use of IFQ derived from QS held by an Aleutian Islands CQE.

Current regulations applicable to GOA CQEs require that IFQ derived from QS held by a CQE be leased to an eligible community resident represented by a CQE. As required by regulations at § 679.2, an eligible community resident must maintain a domicile in one of the CQE communities for the 12 months preceding the time when the assertion of residence is made to be considered eligible to receive IFQ. This 12-month domicile requirement has been difficult for individuals to meet in some of the smaller GOA CQE communities, because many of these communities do not have year-round economies. Some residents live outside the community for a period or season, even if their principal home is in the community. Similar conditions exist in the Aleutian Islands CQE-eligible community of Adak. While many vessels have landed catch in Adak in the past, not all vessel owners or crew were Adak residents. For example, the most recent available data indicates that in 2011, two holders of Area 4B halibut QS and one holder of Aleutian Islands sablefish QS reported an Adak address. However, data from 2011 indicates that 13 persons landed Area 4B halibut IFQ in Adak during that same year (see Section 2.6.1 of the RIR for additional detail).

The proposed rule would allow an Aleutian Islands CQE to lease any IFQ derived from their QS to either eligible community residents of Adak or non-residents for a period of up to 5 years after the effective date of the final rule, if implemented. After the 5-year period, the CQE would be required to lease the annual IFQ derived from QS it holds only to eligible community residents of Adak.

The Council recommended limiting the ability for an Aleutian Islands CQE to lease IFQ to non-CQE residents after 5 years to provide adequate time to accrue benefits to the community of Adak through deliveries, provide crew opportunities for residents, and earn revenue that could assist the purchase of additional QS. After the 5-year period, the CQE would be limited to leasing to persons meeting CQE residency requirements. The intent of this requirement is to explicitly tie the potential long-term benefits of QS held by an Aleutian Islands CQE to the residents of Adak. This proposed rule would modify regulations at § 679.41(g)(6) and § 679.42(e)(8) and (f)(7) to implement these IFQ lease requirements for Aleutian Islands sablefish QS and Area 4B halibut QS.

This proposed rule would also relieve requirements for an Aleutian Islands CQE, which are currently applicable to GOA CQEs, that an eligible community resident of a CQE community leasing IFQ have 150 days experience on board a vessel working as part of the harvesting crew in a U.S. commercial fishery. An eligible community resident is defined at § 679.2 as a person who is a citizen of the U.S.; maintains a domicile in one of the communities listed in Table 21 to part 679 for the 12 months preceding the time when the assertion of residence is made, and who is not claiming residency in another community, state, territory, or country; and is an IFQ crew member. An IFQ crew member is defined in regulations at § 679.2 as any individual who has at least 150 days experience working as part of the harvesting crew in any U.S. commercial fishery, or any individual who receives an initial allocation of QS. Regulations at § 679.41(d) require that for an individual to be eligible to receive QS or IFQ by transfer, that individual must submit an Application for Eligibility to Receive QS/IFQ to obtain a Transfer Eligibility Certificate (TEC). A TEC requires that the individual be a U.S. citizen and approved by NMFS as an IFQ crewmember.

The Council recommended removing the 150-day experience requirement for eligible community residents of Adak to accommodate younger residents of Adak who may seek employment, but lack the 150 days of experience as a crew member. Many younger fishermen have experience operating a vessel out of Adak fishing subsistence halibut, but in the western Aleutian Islands there are few commercial fisheries in which they can gain the necessary number of days of experience as crew members, compared to what is available for residents of GOA communities. This is in part due to fewer fishermen operating out of the Aleutian Islands on whose vessels one might be employed as a crew member.

The Council recommended that under this proposed rule an eligible community resident receiving IFQ derived from QS held by an Aleutian Islands CQE would have to hold a TEC, but that NMFS would not apply the 150-day criteria for the eligible community resident to receive the TEC for purposes of receiving IFQ from an Aleutian Islands CQE. This proposed rule would modify the definition of an eligible community resident at § 679.2 to state that a person would need to be an IFQ crew member only if that person is receiving halibut or sablefish IFQ that is derived from QS held by a CQE on behalf of an eligible community in the GOA. This proposed rule would also modify regulations at § 679.41(d)(6) to state that NMFS would not disapprove an application for a TEC if a person does not meet the 150-day criteria, provided the person attests that he or she is an eligible community resident of Adak and that person is receiving only IFQ from an Aleutian Islands CQE for Area 4B halibut or Aleutian Islands sablefish. NMFS would change the Application for Eligibility to Receive QS/IFQ (the application for a TEC) to allow an applicant to attest they have been a resident of Adak, AK, for a minimum of 12 months prior to the date of the application. Persons who are not eligible community residents of Adak would need to continue to meet the 150-day requirement to be eligible to receive a TEC and receive IFQ derived from the QS held by an Aleutian Islands CQE.

On June 28, 2013 (78 FR 39122) NMFS proposed revisions to the definition of eligible community resident at § 679.2 under a separate proposed rule to implement a halibut catch sharing plan for Areas 2C and 3A. If this proposed rule to implement the Aleutian Islands CQE Program is approved and effective prior to the effective date of regulations implementing the halibut catch sharing plan, NMFS will modify the definition of eligible community resident at § 679.2 as proposed in this rule. If the regulations to implement the halibut catch sharing plan are effective prior to the approval of regulations to implement an Aleutian Islands CQE, the final rule to implement the Aleutian Islands CQE Program will specify the required revisions to the definition of eligible community resident that is in effect at that time.

The Aleutian Islands CQE would use the same Application for a Non-Profit Corporation to be Designated as a Community Quota Entity (CQE) as in the existing GOA CQE Program. However, NMFS will separate the existing Application for Transfer of QS/IFQ to or From a Community Quota Entity (CQE) into two application forms: one for transfer of QS to and from a CQE and the other for a CQE to transfer IFQ to or from an eligible community resident or non-resident. NMFS will also modify the Application for Eligibility to Receive QS/IFQ to include the eligibility requirements specific to individual residents of Adak who wish to lease IFQ from the Aleutian Islands CQE. These changes will clarify application requirements and distinguish the residency status of persons applying to receive IFQ from the Aleutian Islands CQE. NMFS would continue to review each transfer application form to ensure that it meets regulatory criteria. The approved lease holder would receive an IFQ permit specifying the amount of IFQ pounds they are permitted to harvest.

Consistent with regulations applicable to the GOA CQE Program, an individual who receives IFQ derived from QS held by a CQE may not designate a hired master to fish the community IFQ: the individual must be on board the vessel when the IFQ is being fished. This provision is intended to ensure that the potential benefits of QS held by communities are realized by the IFQ lease holder. Individuals who hold leases of IFQ from communities would be considered IFQ permit holders and would be subject to the regulations that govern other permit holders, including the payment of annual fees as required under § 679.45.

e. Individual and Vessel Use Caps

This proposed action would not modify vessel use caps currently applicable to vessels fishing either halibut or sablefish IFQ derived from CQE-held QS. This provision also applies to the GOA CQE Program. Under regulations at § 679.42(h), a vessel may not be used to harvest more than 50,000 pounds (22.7 mt) of IFQ derived from QS held by a CQE. In addition, a vessel that harvests IFQ derived from CQE-held QS is subject to overall vessel use caps described at § 679.42(h). In effect, a vessel could not use more than 50,000 pounds of halibut IFQ and 50,000 pounds of sablefish IFQ derived from QS held by a CQE during the fishing year. A vessel could be used to harvest additional IFQ from non-CQE-held QS up to the overall vessel use caps applicable in the IFQ Program, if the overall vessel use caps are greater than 50,000 pounds. If the vessel use caps in the IFQ Program are lower than 50,000 pounds in a given year, then the lowest vessel use cap would apply. The intent of this provision is to ensure a broad distribution of CQE IFQ among community fishermen and to limit the amount of IFQ that may be leased to those individuals who already hold QS or lease IFQ from another source. Because existing regulations at § 679.42(h) apply to all CQEs, which would include the proposed Aleutian Islands CQE, no additional regulatory changes are required to implement this provision.

6. Joint and Several Liability for Violations

Consistent with current regulations applicable to GOA CQEs, both the Aleutian Islands CQE and the individual fisherman to whom the CQE leases its IFQ would be considered jointly and severally liable for any IFQ fishery violation committed while the individual fisherman is fishing the CQE leased IFQ. This joint and several liability would be analogous to the joint and several liability currently imposed on IFQ permit holders and any hired masters fishing the permit holders' IFQ.

7. Performance Standards

The performance standards for the proposed Aleutian Islands CQE Program would be the same as those established for the GOA CQE Program, and are described in Section 2.6.2.5 of the RIR (see **ADDRESSES**). These performance standards serve as guidance to the public in how the Council intends that CQE QS and IFQ be used. The performance standards describe the CQE Program goals and allow the CQE to describe the steps to meet those goals. The performance standards are focused on ensuring that residents have an equal opportunity to benefit from the CQE Program and that the CQE operates in a manner that maximizes benefits to the community. As guidance, compliance is voluntary and not implemented in regulation. CQE performance is monitored through the CQE annual report and evaluated through periodic review of the CQE Program. The benefits of monitoring performance using standardized goals are that the CQE is allowed to determine the specific steps to meet self-defined performance criteria within its unique community, and the CQE is able to maintain flexibility in the day to day management of the program.

8. Administrative Oversight

This proposed rule would establish administrative oversight provisions consistent with current regulations applicable to GOA CQEs. Implementation of the Aleutian Islands CQE would require that NMFS (1) review an application of eligibility for a non-profit organization seeking to be qualified as a CQE for a community in the Aleutian Islands and certify the CQE as eligible; and (2) review an annual report detailing the use of QS and IFQ by the CQE and Aleutian Islands fishery participants. The Council intended that the application for eligibility and the annual report would be similar to what is required under the GOA CQE Program. These reviews ensure that the CQEs are adequately representing the communities and that the program is meeting the goals established by the Council.

Unless otherwise specified in this proposed rule, the restrictions that apply to any current QS holder would apply to an Aleutian Islands CQE. If a CQE does not remain in compliance, (e.g., by failing to submit a complete annual report) then NMFS could initiate administrative proceedings to deny the transfer of QS to or IFQ from the CQE. As with other administrative determinations under the IFQ Program, any such determination could be appealed under the procedures set forth in regulations at § 679.43. Regulatory measures to monitor the ability of the non-profit entities to meet the goals of distributing IFQ are incorporated in the existing CQE eligibility application (see § 679.41 (l)(3)) and annual reporting requirements (see § 679.5(t)).

a. CQE Eligibility Application

In the GOA CQE Program, each community is required to form a non-profit corporation under the laws of the State of Alaska before submitting an application to NMFS to be eligible as a CQE. Under the CQE Program proposed for the Aleutian Islands, the Council identified the CQE for the community of Adak as the Adak Community Entity approved by NMFS to hold the allocation of Western Aleutian Islands golden king crab provided under regulations at § 680.40(a)(1), which is the ACDC. Even though the ACDC is the Adak Community Entity, the ACDC would still be required to submit an application to the NMFS Regional Administrator that contains specific eligibility information. Should the holder of the Western Aleutian Islands golden king crab allocation change, then a new CQE would need to be incorporated and apply to NMFS to be an eligible CQE.

To minimize potential conflict that may exist among non-profit entities seeking qualification as a CQE, NMFS would not consider a recommendation from a community governing body supporting more than one non-profit entity to hold QS on behalf of that community. The specific governing body that provides the recommendation is defined in regulations at § 679.41(l)(3)(v). Because the only identified eligible community in the Aleutian Islands that could qualify under this proposed rule is Adak, and that community is incorporated as a municipality under State of Alaska statutes, the City Council of Adak would recommend the non-profit organization to serve as the CQE for that community.

Consistent with regulations applicable to GOA CQEs at § 679.41(l)(3), a non-profit organization applying to become an Aleutian Islands CQE would need to submit a complete application to become a CQE. Except as discussed below, the Aleutian Islands CQE would complete the same application as that currently required for GOA CQEs. This proposed rule would modify portions of that application at § 679.41(l)(3)(iv) to require that an Aleutian Islands CQE provide a statement describing the procedures that will be used to determine the distribution of IFQ to eligible community residents and non-residents of Adak, including procedures used to solicit requests from eligible community residents and non-residents to lease IFQ; and criteria used to determine the distribution of IFQ leases among eligible community residents and non-residents and the relative weighting of those criteria. Because this proposed rule would allow an Aleutian Islands CQE to lease IFQ to eligible community residents and non-residents for the first 5 years after the effective date of the final rule, this modification would clarify the mechanisms for considering and distributing IFQ among eligible community residents and non-residents of Adak.

b. Annual Report

Consistent with current annual reporting requirements applicable to GOA CQEs at § 679.5(t), the Aleutian Islands CQE would need to submit an annual report by January 31 to NMFS and to the governing body for the community represented by the CQE (i.e., City of Adak), detailing the use of QS and IFQ by the CQE and fishery participants during the previous year's fishing season. A complete annual report would need to contain all general report requirements and all program specific report requirements applicable to the CQE in accordance with § 679.5(t). This proposed rule would modify § 679.5(t)(5)(v)(B), (C), (E), and (J) to require that the CQE provide a description of the process used to solicit applications from eligible community residents and non-residents; the total number of eligible community residents and non-residents who applied to use IFQ; a detailed description of the criteria used by the CQE to distribute IFQ among eligible community residents and non-residents who applied to use IFQ; and any payments made to the CQE for use of the IFQ by eligible community residents and non-residents. These revisions would be necessary to gather information on the use of IFQ by persons who are not residents of Adak during the first 5 years after the effective date of this proposed rule. These provisions would not affect GOA CQEs because existing regulations at § 679.42(e)(8) and (f)(7) prohibit persons other than eligible community residents from fishing the IFQ held by GOA CQEs; therefore, no additional reporting of information on non-residents would be required from GOA CQEs.

Consistent with regulations applicable to GOA CQEs at § 679.41(l)(3), if an

Aleutian Islands CQE fails to submit a timely and complete annual report, or if other information indicates that the CQE is not adhering to the procedures for distributing or managing QS and IFQ on behalf of a community as established under its application and these regulations, then NMFS would initiate an administrative action to suspend the ability of the CQE to transfer QS and IFQ, and to receive additional QS by transfer. This action would be implemented consistent with the administrative review procedures provided at § 679.43. To ensure that the CQE acts in the best interest of the community and fulfills all the requirements established in its application for eligibility and the regulations for this program, an eligible community is encouraged to provide a CQE monitoring mechanism.

Action 2: Allow D Share IFQ To Be Fished on Category C Vessels

The purpose of Action 2 is to allow both CQE and non-CQE D share halibut QS to be fished on vessels less than or equal to 60 ft. LOA (vessel category C) in IFQ regulatory area 4B. In February 2010, the Council approved this proposed action for analysis and took final action in February 2012. This proposed action is commonly known as a ''fish-up'' action because it allows QS designated for a small vessel category to be fished ''up'' on a larger vessel category. In 2007, NMFS implemented a similar action for Areas 3B and 4C (72 FR 44795, August 9, 2007).

The RIR/IRFA prepared for Action 2 (See **ADDRESSES**) indicates that in 2010 in Area 4B, 12 QS holders were permitted to fish D share IFQ, which equates to 3 percent of the Area 4B QS, but no category D vessels fished. In Area 4B, many of the fishing grounds are located several days of travel time from the nearest available processing facilities in Adak or Dutch Harbor. The distance between the fishing grounds and processing facilities can limit the ability of category D vessels to be used to fish D share IFQ because weather conditions can preclude the safe operation of these relatively small vessels. Additionally, affected fishermen assert that fishing during peak safety conditions may not be possible for small vessels, because processors may not be accepting halibut during the summer, which tends to coincide with the best weather conditions. Therefore, category D vessels may be limited to a substantially shortened season in less safe conditions to harvest their IFQ. As an additional result of these conditions, category D vessel owners have reported that they prefer to purchase B and C share QS because it allows them to use the resulting IFQ on larger vessels.

This proposed action would modify regulations at § 679.42(a)(2)(iv) to allow Area 4B halibut D share QS to be fished on vessels less than or equal to 60 ft (18.3 m) LOA. Implementation of this action in Area 4B would address economic hardship and safety concerns resulting from fishing on small vessels. The proposed action would relieve a restriction placed on IFQ fishery participants in Area 4B, and further the IFQ Program goals by effectively increasing the amount of IFQ that may be harvested by category C vessels. The Council considered, but did not recommend, allowing the use of D shares on vessels longer than 60 ft (18.3 m) LOA. The use of D shares on vessels longer than 60 ft (18.3 m) LOA was not required to address the specific economic and safety concerns raised by the affected public and considered in the analysis of this action.

Classification

Pursuant to section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 102, the Halibut Act, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Regulations governing the U.S. fisheries for Pacific halibut are developed by the International Pacific Halibut Commission (IPHC), the Pacific Fishery Management Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the regional council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. The proposed action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Impact Review

A Regulatory Impact Review (RIR) was prepared for the actions proposed in this rule to assess all costs and benefits of available regulatory alternatives and considers all quantitative and qualitative measures. The NMFS guidelines for preparing economic analysis of fishery management actions can be found on the Regulatory Streamline Project Web site at *http://home.nmfs.noaa.gov/sf/regstream/fl_guidance.htm.* Copies of the RIRs prepared for the actions proposed in this rule are available from NMFS (see **ADDRESSES**). Summaries of the RIRs follow.

Action 1 of the proposed rule would redistribute some halibut and sablefish QS from individuals to a CQE representing the community of Adak. The action would result in a voluntary market transaction in which willing buyers and sellers negotiate a mutually beneficial transfer of QS. Assuming the Aleutian Islands CQE purchases QS, section 2.6.4 of the RIR (see **ADDRESSES**) indicates this transaction is limited by the 15 percent use cap determined by the Council, which in 2011 equated to 261,600 pounds of Area 4B halibut and 410,700 pounds of Aleutian Islands sablefish. However, the net benefits of any amount of QS exchange cannot be determined because the social value and resultant benefits of QS transfer are not quantifiable. Social values may include improved economic circumstances in the community, the stimulation of community activity, and an increase in the economic welfare of community members.

Action 2 of the proposed rule would address safety concerns for small vessel operators and concerns over the ability of D share QS holders in Area 4B to completely harvest their IFQ. These problems can be alleviated to some degree by relaxing the current restriction on vessel length associated with D share QS. As discussed in section 1.8 of the RIR (see **ADDRESSES**), the proposed action generally has few attributable costs and is expected to produce benefits in the form of small economic efficiencies, greater operational flexibility, and improved safety at sea for a few fishery participants.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), first enacted in 1980, and codified at 5 U.S.C. 600–611, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are: (1) To increase agency awareness and understanding of the impact of their regulations on small business; (2) to require that agencies communicate and explain their findings to the public; and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the adverse impacts to small entities of a regulation, while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either, (1) ''certify'' that the action will not have a significant adverse effect on a substantial number of small entities, and support such a certification declaration with a ''factual basis,'' demonstrating this outcome, or (2) if such a certification cannot be supported by a factual basis, prepare and make available for public review an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact of the proposed rule on small entities.

This IRFA has been prepared instead of seeking certification. Analytical requirements for the IRFA are described below in more detail. The IRFA must contain:

1. A description of the reasons why action by the agency is being considered;

2. A succinct statement of the objectives of, and the legal basis for, the proposed rule;

3. A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);

4. A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

5. An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and

6. A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:

a. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

b. The clarification, consolidation or simplification of compliance and reporting requirements under the rule for such small entities;

c. The use of performance rather than design standards; and

d. An exemption from coverage of the rule, or any part thereof, for such small entities.

The ''universe'' of entities to be considered in an IRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment would be considered the universe for purposes of this analysis.

In preparing an IRFA, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule (and alternatives to the proposed rule), or more general descriptive statements if quantification is not practicable or reliable.

Reason for the Action, Objectives, and the Legal Basis for, the Proposed Rule

Action 1 of the proposed rule targets small, rural, fishing-dependent coastal communities in the Aleutian Islands. The goal is to provide for sustained participation of such communities in the halibut and sablefish IFQ fisheries. While not necessarily a direct result of the implementation of the commercial IFQ program, declines in the number of community fishermen and access to nearby marine resources are ongoing problems in rural communities that may be exacerbated by the IFQ program. The action is intended to alleviate the identified problem and provide the communities with an opportunity to increase participation in the IFQ fisheries. The proposed rule would allow a community with few economic alternatives to hold commercial QS in Area 4B and may help ensure access to and sustain participation in the commercial halibut and sablefish fisheries for that community.

Action 2 of the proposed rule would address safety concerns associated with fishing in halibut management area 4B on small vessels. The objective of the proposed action is to alleviate these safety concerns, in large part, by relaxing the current restrictions on vessel length associated with D share QS. As D share QS comprises less than 3 percent of the halibut QS in the area, relaxing this restriction would allow for increased economic efficiencies and better safety by allowing D share QS to be harvested along with larger vessel category IFQ.

The Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act of 1982 provide the legal basis for this proposed action. The 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act require that management programs take into account the social context of the fisheries, especially the role of communities (Sec. 301(a)(8), 303(a)(9)).

Description and Estimate of Small Entities

The RFA recognizes and defines three kinds of small entities: (1) Small businesses, (2) small non-profit organizations, and (3) and small government jurisdictions.

Section 601(3) of the RFA defines a small business as having the same meaning as a small business concern, which is defined under Section 3 of the Small Business Act. A small business or small business concern includes any firm that is independently owned and operated and not dominant in its field of operation. The U.S. Small Business Administration (SBA) has further defined a small business concern as one ''organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor. A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.''

The RFA defines small organizations as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

The SBA has developed size standards to carry out the purposes of the Small Business Act, and those size standards can be found in 13 CFR 121.201. The size standards are matched to North American Industry Classification System industries. On June 20, 2013, the SBA issued a final rule revising the small business size standards for several industries effective

July 22, 2013, 78 FR 37398 (June 20, 2013). The rule increases the size standard for Finfish Fishing from $4.0 to 19.0 million, Shellfish Fishing $4.0 to 5.0 million, and Other Marine Fishing from $4.0 to 7.0 million. Id. at 37400 (Table 1). The new size standards were used to prepare the IRFA for this action.

A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of $19 million for all its affiliated operations worldwide. The SBA has established principles of affiliation to determine whether a business concern is independently owned and operated. In general, business concerns are affiliates of each other when one concern controls or has the power to control the other, or when a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805, are not considered affiliates of such entities, or with other concerns owned by these entities, solely because of their common ownership.

Affiliation may be based on stock ownership when (1) a person is an affiliate of a concern if the person owns or controls, or has the power to control 50 percent or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, or (2) if two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors, or general partners control the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as a joint venture if the ostensible subcontractor would perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationships, including contract management, technical responsibilities, and the percentage of subcontracted work.

Action 1 of the proposed rule would apply to communities in the Aleutian Islands that meet the proposed CQE Program eligibility criteria. For the foreseeable future, Adak, Alaska, is the only community in the Aleutian Islands that meets the proposed CQE eligibility criteria. The commercial regulations at § 679.20 define a CQE as a non-profit organization that (1) did not exist prior to April 10, 2002; (2) represents at least one eligible community that is in regulations (Table 21 part 679); and (3) has been approved by the Regional Administrator to obtain by transfer and hold QS, and to lease IFQ resulting from the QS on behalf of an eligible community.

The eligible community of Adak, AK, is considered a small entity (small governmental jurisdictions) under the RFA, since it is a government of a town or village with a population of less than 50,000. The purpose and intent of the proposed action is to have the affected community entity acquire QS and make the resulting IFQ available by lease to eligible harvesters. Those harvesters will be required under provisions of the proposed action to make a series of reports and declarations to NMFS in order to be found eligible to participate. Therefore, those commercial fishing operations would be directly regulated small entities, although their number is unknown at this time. Further, NMFS anticipates that any economic impacts accruing from the proposed action to these small entities would be beneficial because it is expected to improve access to the IFQ fisheries for affected small entities.

Some businesses operating in the commercial halibut fisheries would be directly regulated by Action 2 of this proposed rule. The proposed action could directly regulate all 12 halibut QS holders who are eligible to transfer D share QS in Area 4B; however, the actual number is expected to be smaller. In 2009, the most recent year of complete ex-vessel price data, the total standard ex-vessel value of the total catch taken in the commercial halibut fishery in Area 4B was about $3 million. Since this action only affects up to 12 Area 4B D share IFQ holders or potentially 3 percent of the total Area 4B IFQ, the affected IFQ holdings can be valued at about $90,000. Action 2 would directly affect participants in the Area 4B halibut fishery who hold D share QS, and would indirectly affect an unknown number of owners of larger, category C vessels upon whose vessels those D share QS may be fished up.

At present, NMFS does not have sufficient ownership and affiliation information to determine precisely the number of entities in the IFQ Program that are ''small'' based on SBA guidelines, nor the number that would be adversely impacted by the present action. For purposes of the RFA, the IRFA assumes that all directly regulated operations are small.

Small entities regulated by Action 2 may be divided into two, mutually exclusive groups to estimate their size relative to the $19 million threshold. There are operations that harvest both halibut and groundfish (sablefish is considered a groundfish species, while halibut is not) for which gross revenue data exist. There are also operations that harvest halibut, but no groundfish, which have gross receipts data. These entities may also harvest species such as herring or salmon.

Section 2.0 of the IRFA (see **ADDRESSES**) estimates that in 2009 the total gross revenues for fixed-gear catcher vessels by entity, from all sources off Alaska, were not more than $19 million in gross revenues, which has been the case since 2003. The average gross revenue for the small fixed-gear catcher vessels was about $510,000. Thus, all of the entities that harvest both halibut and groundfish in Area 4B are under the threshold. Since the IFQ Program limits the amount of annual IFQ that any single vessel may use to harvest halibut and sablefish and the maximum number of QS units an entity may use, NMFS believes that no vessels that harvest halibut exclusively would exceed the $19 million threshold, either.

Based upon gross receipts data for the halibut fishery, and more general information concerning the probable economic activity of vessels in this IFQ fishery, no entity (or at most a *de minimis* number) directly regulated by these restrictions could have been used to land fish worth more than $19 million in combined gross receipts in 2009. Therefore, all halibut vessels have been assumed to be ''small entities'' for purposes of the IRFA. This simplifying assumption may overestimate the number of small entities, since it does not take account of vessel affiliations, owing to an absence of reliable data on the existence and nature of these relationships.

Based on the low revenues for the average groundfish vessel and the low cap on maximum halibut and sablefish revenues, additional revenues from herring, salmon, crab, or shrimp likely would be relatively small for most of this class of vessels. Therefore, the available data and IRFA (see **ADDRESSES**) suggest that there are few, if any, large entities among the directly regulated entities subject to the proposed action.

Projected Reporting, Recordkeeping and Other Compliance Requirements

Implementation of the proposed rule would not change the overall reporting structure and recordkeeping requirements of the vessels in the IFQ fisheries. Under the Council's preferred alternative for Action 1, the eligible community of Adak would have to create and qualify a non-profit entity to purchase, hold, and lease the quota share on behalf of the community in order to participate in the CQE Program. This proposed action would require additional reporting, recordkeeping, and other compliance requirements for the CQE entity. Specifically, to become a CQE, a party must file an Application for a Non-Profit Corporation to be Designated as a Community Quota Entity (CQE) with the State of Alaska. A CQE must then submit an application of eligibility for a non-profit organization seeking to be qualified as a CQE for a community in the Aleutian Islands before the NMFS Regional Administrator may certify the CQE as eligible. Once an eligible CQE is formed, the CQE would be subject to the same recordkeeping and reporting requirements for QS and IFQ transfers as are individuals who hold QS. The CQE also would be required to submit to NMFS an annual report detailing the use of QS and IFQ by the CQE and Aleutian Islands fishery participants.

The cost to the Adak CQE in fulfilling these administrative requirements will vary, but is expected to be minimal relative to the potential benefits. Neither the applications to be designated and certified as a CQE nor the annual report is intended or expected to be significantly burdensome on the entity. In sum, the Adak CQE would not be mandated to fulfill these reporting requirements unless it chooses to participate in the CQE program, and participation in the program is on a voluntary basis.

Individuals that lease IFQ from the Adak CQE would generally be subject to the same recordkeeping and reporting requirements as are individuals who hold QS. The primary recordkeeping and reporting requirements beyond those required for individual QS holders, as discussed above, are the responsibility of the Adak CQE, which would be listed as the QS holder. These requirements are necessary under the preferred alternative to monitor how QS held by the Adak CQE is being used among eligible harvesters and to collect information necessary to evaluate the program.

No new requirements for recordkeeping and reporting were identified for Action 2 of the proposed rule to relax the current restrictions on vessel length associated with D share QS. Implementation of the proposed rule would not change the overall reporting structure and recordkeeping requirements of the vessels in the IFQ fisheries.

Duplicate, Overlapping, or Conflicting Federal Rules

No federal rules that might duplicate, overlap, or conflict with these proposed actions have been identified.

Description of Significant Alternatives

The alternatives under consideration for Action 1 are provided in section 2.2 of the RIR (see **ADDRESSES**). Alternative 1 is the no action alternative, and Alternative 2 would allow an eligible non-profit entity representing an eligible community in Area 4B to hold commercial Area 4B halibut and Aleutian Islands sablefish QS for lease to and use by community residents. Although the analysis identifies two primary alternatives, the second alternative contains seven elements and multiple options within each element that effectively operate as separate alternatives. Thus, the Council was able to specify options within each of the elements under Alternative 2 independent of each other. These elements and options effectively provided the Council with hundreds of different possible combinations, or ''alternatives'' from which to select a preferred alternative at final action. The Council therefore identified a wide range of elements to be analyzed that would meet the stated objective of this action, while minimizing, to the extent practicable, any adverse impacts on small entities. For a complete treatment of each of these competing elements, options, and suboptions, refer to section 2.6 of the RIR prepared for Action 1 (see **ADDRESSES**). The comprehensive economic analysis of all of the elements and options under consideration in Alternative 2 is provided in section 2.6.2 of the RIR.

The alternatives under consideration for Action 2 are provided in section 1.7 of the RIR for Action 2 (see **ADDRESSES**). Alternative 1, the no action or status quo alternative, would continue to require holders of Area 4B D share QS to harvest the resulting IFQ from vessels 35 feet or less in length. Alternative 2, the Council's preferred alternative, would remove the category D vessel size restriction for Area 4B halibut QS. This would allow holders of such QS to harvest the resulting IFQ on larger vessels up to 60 feet in LOA.

NOAA Fisheries is not aware of any alternatives, in addition to the alternatives considered in this proposed rule, that would more effectively meet these RFA criteria.

Impacts on Directly Regulated Small Entities

Since participation in the CQE Program is completely voluntary, Action 1 of this proposed rule is not expected to result in adverse impacts on directly regulated small entities. NMFS expects that there will be some redistribution of halibut and sablefish QS under the proposed action, because it is intended to have distributional effects among QS holders by promoting the transfer of a limited amount of QS from persons (which may include corporations) to the CQE. The maximum amount of QS that could be purchased by a CQE would be 15 percent of the regulatory Area 4B halibut QS and 15 percent of the Aleutian Islands sablefish QS (Area 4B coincides with the Aleutian Islands). Overall, individuals residing in communities other than Adak, AK, will still realize the majority of the benefit from Aleutian Islands sablefish QS, but more of the revenues will be retained in the community of Adak than are currently, and less in the larger, more accessible communities, or in communities outside of Alaska, where other Aleutian Islands sablefish and Area 4B halibut QS holders reside.

Under Action 1, a non-profit organization representing Adak would be allowed to purchase catcher vessel QS for annual lease to, and use by, fishery participants that could benefit the community. The effect of this action on Adak will depend on the willingness and ability of the Adak CQE to purchase Area 4B halibut QS and Aleutian Islands sablefish QS. Benefits from increased QS holdings could include lower costs to participate in fisheries and help maintain access to and participation in the IFQ fisheries. The distribution of these benefits is regulated in part by the requirement that each fishery participant would be limited to leasing a maximum of 50,000 pounds of each species of IFQ on an annual basis inclusive of privately held IFQ. In addition, each vessel would be limited to using a maximum of 50,000 pounds of each species of IFQ derived from CQE QS on board annually. The combination of these requirements limits the benefits any one fishery participant may gain from the use of CQE-held QS.

The proposed action may also promote efficient utilization of fishery resources by providing an opportunity for additional halibut and sablefish total allowable catch allocated to Area 4B and the Aleutian Islands to be harvested. Amendment 102 is intended to comply with the objectives of National Standard 8 by facilitating long-term access to and participation in the commercial halibut and sablefish fisheries by residents of small, remote, coastal communities in the Aleutian Islands.

All available evidence suggests that by the voluntary nature of the CQE Program and the proposed provisions themselves, there is no potential for proposed Action 1 to impose significant adverse economic impacts on a substantial number of small entities.

Under Action 2 of the proposed rule, retention of the no action or status quo alternative would impose adverse economic impacts on directly regulated small entities. Under the status quo, as described in detail in section 1.7 of the RIR (see **ADDRESSES**), D share QS holders (all of whom are assumed to be small entities) must fish their quota from boats 35 feet or less in LOA. This requirement puts these entities at some physical and economic risk, owing to the remoteness and severity of weather and sea conditions under which they operate.

Alternative 2, the Council's preferred alternative, seeks to mitigate these adverse economic and operational impacts on directly regulated small entities. It does so by removing the category D vessel-size restriction for Area 4B halibut QS; thus, allowing harvest of the resulting IFQ from vessels better suited to the extremes of this region. By allowing these entities to harvest IFQ derived from D share QS on larger vessels, the action recognizes the unique needs of, and burdens imposed upon, directly regulated small entities in Area 4B, and makes accommodation for these limitations. On the basis of the foregoing analysis, the proposed alternative (relative to the status quo) appears to be the least burdensome for directly regulated small entities, among all available alternatives.

Collection-of-Information Requirements

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The collections are listed below by OMB control number.

OMB Control Number 0648–0272

Public reporting burden is estimated to average per response two hours for the Application for Eligibility to Receive QS/IFQ.

OMB Control Number 0648–0665

Public reporting burden is estimated to average per response two hours for an Application for Transfer of QS to or from a Community Quota Entity (CQE) and two hours for an Application for a CQE to transfer IFQ to or from an eligible community resident or non-resident.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Send comments on these or any other aspects of the collection of information to NMFS at the **ADDRESSES** above, and email to *OIRA_Submission@omb.eop.gov,* or fax to *(202) 395–7285*.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 5, 2013.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

■ 2. In § 679.2,
■ a. Under the definition for ''Community quota entity'', revise the introductory text, paragraph (3) and add paragraph (4) and;
■ b. Under the definition for ''Eligible community'', revise the introductory text, paragraph (2) introductory text and add paragraph (3) and;
■ c. Under the definition for ''Eligible community resident'', revise paragraph (3)

The revisions and additions read as follows:

§ 679.2 Definitions.

* * * * *

Community quota entity (CQE) (for purposes of the IFQ Program) means a non-profit organization that:

* * * * *

(3) Has been approved by the Regional Administrator to obtain by transfer and hold QS, and to lease IFQ resulting from the QS on behalf of an eligible community; and

(4) Must be the Adak Community Entity as defined at § 680.2 if that non-profit organization represents the eligible community of Adak, AK.

* * * * *

Eligible community means:

* * * * *

(2) For purposes of the IFQ program in the GOA, a community that is listed in Table 21 to this part, and that:

* * * * *

(3) For purposes of the IFQ program in the Aleutian Islands subarea, a community that is listed in Table 21 to this part, and that:

(i) Is a municipality or census designated place, as defined in the 2000 United States Census, located on the Aleutian Islands subarea coast of the North Pacific Ocean;

(ii) Is not an entity identified as eligible for the CDQ Program under 16 U.S.C. 1855(i)(1)(D);

(iii) Has a population of not less than 20 and not more than 1,500 persons based on the 2000 United States Census;

(iv) Has had a resident of that community with at least one commercial landing of halibut or sablefish made during the period from 1980 through 2000, as documented by the State of Alaska Commercial Fisheries Entry Commission; and

(v) Is not accessible by road to a community larger than 1,500 persons based on the 2000 United States Census.

* * * * *

Eligible community resident means, for purposes of the IFQ Program, any individual who:

* * * * *

(3) Is an IFQ crew member only if that person is receiving halibut or sablefish IFQ that is derived from QS held by a CQE on behalf of an eligible community in the GOA.

* * * * *

■ 3. In § 679.5, revise paragraphs (t)(5)(v)(B), (C), (E), and (J) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(t) * * *

(5) * * *

(v) * * *

(B) A description of the process used by the CQE to solicit applications from eligible community residents and non-residents to use IFQ that is derived from QS that the CQE is holding on behalf of the eligible community;

(C) The total number of eligible community residents and non-residents who applied to use IFQ derived from QS held by the CQE;

* * * * *

(E) A detailed description of the criteria used by the CQE to distribute IFQ among eligible community residents and non-residents who applied to use IFQ held by the CQE;

* * * * *

(J) For each community whose eligible community residents and non-residents landed IFQ derived from QS held by the CQE, provide any payments made to the CQE for use of the IFQ.

* * * * *

■ 4. In § 679.41, revise paragraphs (d)(6)(i), (g)(6), and (l)(3)(iv) to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

* * * * *

(d) * * *

(6) * * *

(i) Fewer than 150 days of experience working as an IFQ crew member, unless that person attests in the Application for Eligibility that he or she is an eligible community resident of Adak, AK, who will receive only halibut IFQ in regulatory area 4B or sablefish IFQ in the regulatory area of the Aleutian Islands subarea that is derived from QS held by a CQE on behalf of Adak, AK.

* * * * *

(g) * * *

(6) IFQ derived from QS held by a CQE on behalf of an eligible community:

(i) In the GOA may be used only by an eligible community resident of that community.

(ii) In the Aleutian Islands subarea may be used by any person who has received an approved Application for Eligibility as described in paragraph (d) of this section prior to [*DATE FIVE YEARS AFTER THE EFFECTIVE DATE OF FINAL RULE*] and only by an eligible community resident of Adak, AK, after [*DATE FIVE YEARS AFTER THE EFFECTIVE DATE OF FINAL RULE*].

* * * * *

(l) * * *

(3) * * *

(iv) A statement describing the procedures that will be used to determine the distribution of IFQ to eligible community residents and non-residents of the community represented by that CQE, including:

(A) Procedures used to solicit requests from eligible community residents and non-residents to lease IFQ; and

(B) Criteria used to determine the distribution of IFQ leases among qualified community residents and non-residents and the relative weighting of those criteria.

* * * * *

■ 5. In § 679.42,

■ a. Revise paragraphs (a)(2)(iii), (a)(2)(iv), (e)(1), (e)(3), (e)(4), (e)(6), (e)(8), (f)(1) introductory text, (f)(3), (f)(5), and (f)(7), and

■ b. Add paragraphs (e)(9) and (f)(2)(iii) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

(a) * * *

(2) * * *

(iii) IFQ derived from QS held by a CQE may be used to harvest IFQ species from a vessel of any length, with the exception of IFQ derived from QS in IFQ regulatory areas 3A and 4B that are assigned to vessel category D.

(iv) In IFQ regulatory areas 3B, 4B, and 4C, category D QS and associated IFQ authorizes an IFQ permit holder to harvest IFQ halibut on a vessel less than or equal to 60 ft (18.3 m) LOA.

* * * * *

(e) * * *

(1) No person other than a CQE representing the community of Adak, AK, individually or collectively, may use more than 3,229,721 units of sablefish QS, except if the amount of a person's initial allocation of sablefish QS is greater than 3,229,721 units, in which case that person may not use more than the amount of the initial allocation.

* * * * *

(3) No CQE may hold sablefish QS in the IFQ regulatory area of the Bering Sea subarea.

(4) No CQE may hold more than:

(i) 3,229,721 units of sablefish QS on behalf of any single eligible community in the GOA; or

(ii) 4,789,874 units of sablefish QS on behalf of any single eligible community in the Aleutian Islands subarea.

* * * * *

(6) In the aggregate, all CQEs are limited to holding a maximum of:

(i) 21 percent of the total QS in each regulatory area specified in § 679.41(e)(2)(i) through (e)(2)(iv) of this part for sablefish.

(ii) 15 percent of the total QS specified in § 679.41(e)(2)(v) of this part for sablefish.

* * * * *

(8) A CQE receiving category B or C sablefish QS through transfer and representing an eligible community:

(i) In the GOA may lease the IFQ resulting from that QS only to an eligible community resident of the eligible community on whose behalf the QS is held; and

(ii) In the Aleutian Islands subarea may lease the IFQ resulting from that QS to any person who has received an approved Application for Eligibility as described in paragraph (d) of this section prior to [*DATE FIVE YEARS AFTER THE EFFECTIVE DATE OF FINAL RULE*] and only to an eligible community resident of Adak, AK, after [*DATE FIVE YEARS AFTER THE EFFECTIVE DATE OF FINAL RULE*].

(9) A CQE representing an eligible community in the Aleutian Islands subarea may receive by transfer or use sablefish QS only in the Aleutian Islands subarea.

* * * * *

(f) * * *

(1) Unless the amount in excess of the following limits was received in the initial allocation of halibut QS, no person other than a CQE representing the community of Adak, AK, individually or collectively, may use more than:

* * * * *

(2) * * *

(iii) *IFQ regulatory area 4B.* 1,392,716 units of halibut QS.

(3) No CQE may hold halibut QS in the IFQ regulatory areas 4A, 4C, 4D, and 4E.

* * * * *

(5) In the aggregate, all CQEs are limited to holding a maximum of:

(i) 21 percent of the total QS in each regulatory area specified in § 679.41(e)(3)(i) through (e)(3)(iii) of this part for halibut.

(ii) 15 percent of the total QS specified in § 679.41(e)(3)(v) of this part for halibut.

* * * * *

(7) A CQE receiving category B, C, or D halibut QS through transfer:

(i) In an IFQ regulatory area specified in § 679.41(e)(3)(i) through (e)(3)(iii) of this part may lease the IFQ resulting from that QS only to an eligible community resident of the eligible community represented by the CQE.

(ii) In IFQ regulatory area 4B may lease the IFQ resulting from that QS to any person who has received an approved Application for Eligibility as described in paragraph (d) of this section prior to [*DATE FIVE YEARS AFTER THE EFFECTIVE DATE OF FINAL RULE*] and only to an eligible community resident of Adak, AK, after [*DATE FIVE YEARS AFTER THE EFFECTIVE DATE OF FINAL RULE*].

* * * * *

■ 6. Revise Table 21 to part 679 to read as follows:

BILLING CODE 3510–22–P

Table 21 to Part 679 – Eligible communities, Halibut IFQ Regulatory Area Location, Community Governing Body that Recommends the CQE, and the Fishing Programs and Associated Areas where a CQE Representing an Eligible Community may be Permitted to Participate.

Eligible GOA or AI community	Halibut IFQ regulatory area in which the community is located	Community governing body that recommends the CQE	May holdhalibut QS in halibut IFQ regulatory				May hold sablefish QS in sablefish IFQ regulatory areas		Maximum number of CHPs that may be held in halibut IFQ regulatory		Maximum number of Pacific cod endorsed non-trawl groundfish licenses that may be assigned in the GOA groundfish regulatory area	
			Area 2C	Area 3A	Area 3B	Area 4B	CG, SE, WG, and WY (All GOA)	AI	Area 2C	Area 3A	Central GOA	Western GOA
Adak	4B	City of Adak				X		X				
Akhiok	3A	City of Akhiok.		X	X		X			7	2	
Angoon	2C	City of Angoon.	X	X			X		4			
Chenega Bay	3A	Chenega IRA Village.		X	X		X			7	2	
Chignik	3B	City of Chignik.		X	X		X				3	
Chignik Lagoon	3B	Chignik Lagoon Village Council.		X	X		X				4	
Chignik Lake	3B	Chignik Lake Traditional Council.		X	X		X				2	
Coffman Cove	2C	City of Coffman Cove.	X	X			X		4			
Cold Bay	3B	City of Cold Bay.		X	X		X					2
Craig	2C	City of Craig.	X	X			X					
Edna Bay	2C	Edna Bay Community Association.	X	X			X		4			
Elfin Cove	2C	Community of Elfin Cove.	X	X			X					
Game Creek	2C	N/A.	X	X			X		4			
Gustavus	2C	Gustavus Community Association.	X	X			X					
Halibut Cove	3A	N/A.		X	X		X			7	2	
Hollis	2C	Hollis Community Council.	X	X			X		4			

Eligible GOA or AI community	Halibut IFQ regulatory area in which the community is located	Community governing body that recommends the CQE	May hold halibut QS in halibut IFQ regulatory				May hold sablefish QS in sablefish IFQ regulatory areas		Maximum number of CHPs that may be held in halibut IFQ regulatory		Maximum number of Pacific cod endorsed non-trawl groundfish licenses that may be assigned in the GOA groundfish regulatory area	
			Area 2C	Area 3A	Area 3B	Area 4B	CG, SE, WG, and WY (All GOA)	AI	Area 2C	Area 3A	Central GOA	Western GOA
Hoonah	2C	City of Hoonah.	X	X			X		4			
Hydaburg	2C	City of Hydaburg.	X	X			X		4			
Ivanof Bay	3B	Ivanof Bay Village Council.		X	X		X					2
Kake	2C	City of Kake.	X	X			X		4			
Karluk	3A	Native Village of Karluk.		X	X		X			7	2	
Kasaan	2C	City of Kasaan.	X	X			X		4			
King Cove	3B	City of King Cove.		X	X		X					9
Klawock	2C	City of Klawock.	X	X			X		4			
Larsen Bay	3A	City of Larsen Bay.		X	X		X			7	2	
Metlakatla	2C	Metlakatla Indian Village.	X	X			X		4			
Meyers Chuck	2C	N/A.	X	X			X		4			
Nanwalek	3A	Nanwalek IRA Council.		X	X		X			7	2	
Naukati Bay	2C	Naukati Bay, Inc.	X	X			X		4			
Old Harbor	3A	City of Old Harbor.		X	X		X			7	5	
Ouzinkie	3A	City of Ouzinkie.		X	X		X			7	9	
Pelican	2C	City of Pelican.	X	X			X		4			
Perryville	3B	Native Village of Perryville.		X	X		X					2
Point Baker	2C	Point Baker Community.	X	X			X		4			
Port Alexander	2C	City of Port Alexander.	X	X			X		4			
Port Graham	3A	Port Graham Village Council.		X	X		X			7	2	
Port Lions	3A	City of Port		X	X		X			7	6	

Eligible GOA or AI community	Halibut IFQ regulatory area in which the community is located	Community governing body that recommends the CQE	May hold halibut QS in halibut IFQ regulatory				May hold sablefish QS in sablefish IFQ regulatory areas		Maximum number of CHPs that may be held in halibut IFQ regulatory		Maximum number of Pacific cod endorsed non-trawl groundfish licenses that may be assigned in the GOA groundfish regulatory area	
			Area 2C	Area 3A	Area 3B	Area 4B	CG, SE, WG, and WY (All GOA)	AI	Area 2C	Area 3A	Central GOA	Western GOA
		Lions.										
Port Protection	2C	Port Protection Community Association.	X	X			X		4			
Sand Point	3B	City of Sand Point.		X	X		X					14
Seldovia	3A	City of Seldovia.		X	X		X			7	8	
Tatitlek	3A	Native Village of Tatitlek.		X	X		X			7	2	
Tenakee Springs	2C	City of Tenakee Springs.	X	X			X		4			
Thorne Bay	2C	City of Thorne Bay.	X	X			X		4			
Tyonek	3A	Native Village of Tyonek.		X	X		X			7	2	
Whale Pass	2C	Whale Pass Community Association.	X	X			X		4			
Yakutat	3A	City of Yakutat.		X	X		X			7	3	

N/A means there is not a governing body recognized in the community at this time.
CHPs are Charter halibut permits.

[FR Doc. 2013–26999 Filed 11–13–13; 8:45 am]
BILLING CODE 3510–22–C

Notices

Federal Register

Vol. 78, No. 220

Thursday, November 14, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

United States Standards for Whole Dry Peas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comment.

SUMMARY: The Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is soliciting comments on proposed revisions to the United States Standards for Whole Dry Peas. The proposal would establish an additional color grading factor requirement for the Whole Dry Peas class ''Smooth Yellow Dry Peas'' and establish a definition for ''fair color yellow peas.'' These changes are being proposed at the request of the Dry Pea industry and will help facilitate the marketing of the class, Smooth Yellow Dry Peas and help ensure the purity of classes for Whole Dry Peas.

DATES: GIPSA will consider comments received by January 13, 2014.

ADDRESSES: You may submit your written or electronic comments on this notice to:

- *Mail, hand deliver, or courier:* Irene Omade, GIPSA, USDA, 1400 Independence Avenue SW., Room 2530, Washington, DC 20250–3604.
- *Email comments to: comments.gipsa@usda.gov.*
- *Fax:* (202) 690–2173.
- *Internet:* Go to *http://www.regulations.gov* and follow the On-Line instruction for submitting comments.

All comments will become a matter of public record and should be identified as ''Whole Dry Pea Notice Comments,'' making reference to the date and page number of this issue of the **Federal Register**. Comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)). Please call the GIPSA Management Support Staff at (202) 720–7486 to make an appointment to read comments.

FOR FURTHER INFORMATION CONTACT: Beverly A. Whalen at USDA, GIPSA, FGIS, Policies, Procedures, and Market Analysis Branch, Field Management Division, National Grain Center, 10383 N. Ambassador Drive, Kansas City, Missouri 64153; Telephone (816) 659–8410; Fax Number (816) 872–1258; email *Beverly.A.Whalen@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 203(c) of the Agricultural Marketing Act of 1946, as amended (AMA) (7 U.S.C. 1622(c)), directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quantity, grade, and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' GIPSA is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities.

GIPSA establishes and maintains a variety of quality and grade standards for agricultural commodities that serve as the fundamental starting point to define commodity quality in the domestic and global marketplace.

GIPSA provides official procedures for how inspectors determine the various grading factors in supporting handbooks, such as the Pea and Lentil Handbook, which is available on GIPSA's public Web site at: *http://www.gipsa.usda.gov/Publications/fgis/handbooks/pealentil_insphb.html.*

The AMA standards and official procedures are voluntary and used widely in private contracts, government procurement and marketing communication. Standards developed under the AMA include those for rice, whole dry peas, split peas, feed peas, lentils and beans. The U.S. standards for whole dry peas, split peas, feed peas, lentils and beans no longer appear in the Code of Federal Regulations, but are now maintained by USDA–GIPSA. The process for developing or reviewing these standards is specified in the AMA regulations (7 CFR 868.102, Procedures for establishing and revising grade standards.) The U.S. Standards for Whole Dry Peas and Split Peas are available from the GIPSA Web site at *Http://www.gipsa.usda.gov,* or by phone, fax, or email from the contact listed above.

GIPSA representatives maintain an ongoing working relationship with the USA Dry Pea and Lentil Council (USADPLC), a national organization of producers, processors, and exporters of U.S. dry peas, lentils, and chickpeas; the US Dry Pea and Lentil Trade Association (USPLTA), a national association representing processors, traders, and transporters in the pea and lentil industry; as well as handlers and merchandisers, to ensure the effectiveness of the U.S. Standards for whole dry peas, split peas, and lentils in today's marketing environment. According to information received by GIPSA from the USADPLC and USPLTA, some currently popular smooth yellow dry pea varieties do not have a true yellow color which necessitates changes to the whole dry pea grade standards. As a result, GIPSA is proposing to establish an additional color grading factor requirement for the Whole Dry Peas class ''Smooth Yellow Dry Peas'' and establish a definition for ''fair color yellow peas.'' The proposed addition to the grade standards will enable the class of smooth yellow dry peas to be marketed on the basis of acceptable appearance.

Whole Dry Pea Color Requirement and Definition Changes

After discussions with pea breeders, producers, processors, and merchandisers, GIPSA is proposing to change the way in which the color standard is applied to the U.S. No. 2 Whole Dry Peas ''Smooth Yellow Dry Pea'' classification only. Doing so will improve the effectiveness of the standards so they may better facilitate product marketing.

The current U.S. Standards for Whole Dry Peas characterize the minimum color requirement for U.S. Nos. 1 and 2 as being ''good color peas'' and the minimum color requirement for U.S. No. 3 as ''poor color peas.'' The existing dry pea color characterizations ''good'' and ''poor'' do not sufficiently address all possible degrees of color in some Smooth Yellow Dry Pea varieties. Samples that are marginally discolored and those which are significantly discolored are both considered to be ''poor color peas.'' Due to the economic significance general appearance (color) has for processors and end-users, GIPSA worked with the USADPLC to establish an additional minimum color requirement for the U.S. No. 2 Smooth Yellow Dry Pea classification only; and a clear definition to describe the color ''fair color yellow pea''. Also, GIPSA worked with USADPLC to create a visual reference image that will aid in the consistent application of a fair color. The proposed definition for fair color yellow peas is: ''Dry yellow peas that in mass are lightly to moderately discolored as a result of storage or any other cause to the extent they cannot be considered of good color.'' The addition of ''fair color yellow peas'' as a minimum color requirement for U.S. No. 2 ''Smooth Yellow Dry Pea'' classification only; the definition of ''fair color yellow peas''; and the establishment of the visual aid for the color to the U.S. Standards for Whole Dry Peas will result in a more uniform and consistent application of the standards.

''Good color peas'' will continue to serve as a minimum color requirement for all classes of U.S. No. 1 Whole Dry Peas and ''Good color peas'' will continue to serve as a minimum color requirement for all classes of U.S. No. 2 Whole Dry Peas with the exception of Smooth Yellow Dry Peas. Samples meeting the minimum color requirement ''poor color peas'' will receive no better than a U.S. No. 3 grade designation for all classes of Whole Dry Peas.

Proposed GIPSA Action

GIPSA is proposing to establish an additional color grading factor requirement for the Whole Dry Peas class ''Smooth Yellow Dry Peas'' and establish a definition for ''fair color yellow peas.'' The proposed addition to the grade standards will enable the class of Smooth Yellow Dry Peas to be marketed on the basis of acceptable appearances. The proposed definition for fair color yellow peas is as follows: ''Dry yellow peas that in mass are lightly to moderately discolored as a result of storage or any other cause to the extent they cannot be considered of good color.''

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

[406 Grades and grade requirements for dockage-free dry peas. (See also 408.)]

Grading factors	Maximum percent limits of: Grades U.S. Nos. [1]		
	1	2	3
Defective Peas:			
Weevil-Damaged Peas	0.3	0.8	1.5
Heat-Damaged Peas	0.2	0.5	1.0
Damaged Peas [2]	1.0	1.5	2.0
Other Classes [3]	0.3	0.8	1.5
Bleached Peas [4]	1.5	3.0	5.0
Split Peas	0.5	1.0	1.5
Shriveled Peas	2.0	4.0	8.0
Peas with Cracked Seedcoats	5.0	7.0	9.0
Foreign Material	0.1	0.2	0.5
Minimum Requirements for Color	Good	Good	Poor
Smooth Yellow Dry Peas	Good	Fair	Poor

U.S. Sample grade: U.S. Sample grade shall be dockage-free peas which:

(a) Do not meet the requirements for the grades U.S. Nos. 1, 2, or 3; or
(b) Contain metal fragments, broken glass, or a commercially objectionable odor; or
(c) Contain more than 15 percent moisture; or
(d) Are materially weathered, heating, or distinctly low quality; or
(e) Are infested with live weevils or other live insects.[5]

[1] Uniformity of Size Requirements—Dry peas of any of the numerical grades shall be of such size that not more than 3.0 percent shall pass through the appropriate oblong-hole sieve as follows:
Mottled peas: 9/64″ x 3/4″
Special grade—Small peas: 10/64″ x 3/4″
All other peas: 11/64″ x 3/4″
[2] Damaged peas do not include weevil-damaged or heat-damaged peas.
[3] These limits do not apply to the class Mixed Dry peas.
[4] These limits do not apply to Mottled, Wrinkled and/or Miscellaneous Dry peas, except for Marrowfat-type Dry peas.
[5] As applied to dockage-free whole dry peas, the meaning of the term *infested* as set forth in the Pea and Lentil Inspection Handbook.

GIPSA will solicit comments for 60 days. All comments received within the comment period will be made part of the public record maintained by GIPSA, will be available to the public for review, and will be considered by GIPSA before final action is taken on the proposal.

Authority: 7 U.S.C. 1621 *et seq.*

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2013–27131 Filed 11–13–13; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 14, 2013.

SUMMARY: The Department of Commerce (Department) has determined that requests for new shipper reviews of the antidumping duty order on freshwater crawfish tail meat (crawfish) from the People's Republic of China (PRC), meet the statutory and regulatory requirements for initiation. The period of review (POR) for these new shipper reviews is September 1, 2012, through August 31, 2013.[1]

FOR FURTHER INFORMATION CONTACT: Bryan Hansen, AD/CVD Operations Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; Telephone: (202) 482–3683.

SUPPLEMENTARY INFORMATION:

Background

The antidumping duty order on crawfish from the PRC published in the **Federal Register** on September 15, 1997.[2] Pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), we received timely requests for new shipper reviews of the order from Hubei Nature Agriculture Industry Co., Ltd. (Hubei Nature) [3] and Hubei Zhenghe Food Co., Ltd. (Hubei Zhenghe).[4] Each company certified that it is both the producer and exporter of the subject merchandise upon which the request was based.[5]

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Hubei Nature and Hubei Zhenghe each certified that it did not export subject merchandise to the United States during the period of investigation (POI).[6] In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Hubei Nature and Hubei Zhenghe each certified that, since the initiation of the investigation, it has never been affiliated with any exporter or producer who exported subject merchandise to the United States during the POI, including those respondents not individually examined during the POI.[7] As required by 19 CFR 351.214(b)(2)(iii)(B), Hubei Nature and Hubei Zhenghe also certified that their export activities were not controlled by the government of the PRC.[8]

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2), Hubei Nature and Hubei Zhenghe each submitted documentation establishing the following: (1) The date on which it first shipped subject merchandise for export to the United States; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.[9]

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), the Department finds that the requests from Hubei Nature and Hubei Zhenghe meet the threshold requirements for initiation of new shipper reviews for shipments of crawfish from the PRC produced and exported by Hubei Nature and produced and exported by Hubei Zhenghe.[10]

The Department intends to issue the preliminary results of these reviews no later than 180 days from the date of initiation and final results of these reviews no later than 90 days after the date the preliminary results are issued.[11] It is the Department's usual practice, in cases involving non-market economy countries, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Hubei Nature and Hubei Zhenghe which will include a section requesting information concerning their eligibility for a separate rate. The new shipper review of Hubei Nature will be rescinded if the Department determines that Hubei Nature has not demonstrated that it is eligible for a separate rate. Likewise, the new shipper review of Hubei Zhenghe will be rescinded if the Department determines that Hubei Zhenghe has not demonstrated that it is eligible for a separate rate.

We will instruct U.S. Customs and Border Protection to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from Hubei Nature and Hubei Zhenghe in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because each company certified that it produced and exported subject merchandise, the sale of which is the basis for the requests for new shipper reviews, we will apply the bonding privilege to Hubei Nature and Hubei Zhenghe only for subject merchandise which were produced and exported by Hubei Nature and produced and exported by Hubei Zhenghe.

To assist in its analysis of the *bona fides* of these two companies' sales, upon initiation of this new shipper review, the Department will require them to submit on an ongoing basis complete transaction information concerning any sales of subject merchandise to the United States that were made subsequent to the POR.

Interested parties requiring access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: November 6, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–27312 Filed 11–13–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* 19 CFR 351.214(g)(1)(i)(A).

[2] *See Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China,* 62 FR 41347 (August 1, 1997), as amended by *Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat From the People's Republic of China,* 62 FR 48218 (September 15, 1997).

[3] *See* Hubei Nature's new shipper request dated September 18, 2013.

[4] *See* Hubei Zhenghe's new shipper request dated September 30, 2013.

[5] *See* Hubei Nature's new shipper request at Exhibit 2 and Hubei Zhenghe's new shipper request at Exhibit 1.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] Hubei Nature's new shipper request at Exhibit 1 and Hubei Zhenghe's new shipper request at Exhibit 2.

[10] *See* the memoranda to the file entitled "Freshwater Crawfish Tail Meat from the People's Republic of China: Initiation Checklist for Antidumping Duty New Shipper Review of Hubei Nature Agriculture Industry Co., Ltd." and "Freshwater Crawfish Tail Meat from the People's Republic of China: Initiation Checklist for Antidumping Duty New Shipper Review of Hubei Zhenghe Food Co., Ltd." dated concurrently with this notice.

[11] *See* section 751(a)(2)(B)(iv) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–997, C–580–873, C–583–852]

Non-Oriented Electrical Steel From the People's Republic of China, the Republic of Korea, and Taiwan: Initiation of Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 14, 2013.

FOR FURTHER INFORMATION CONTACT: Joshua Morris at (202) 482–1779 (the People's Republic of China (PRC)); Austin Redington at (202) 482–1664 (the Republic of Korea (Korea)); and Patricia Tran at (202) 482–1503 (Taiwan), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION

The Petitions

On September 30, 2013,[1] the Department of Commerce (the Department) received countervailing duty (CVD) petitions concerning imports of non-oriented electrical steel (NOES) from the PRC, Korea, and Taiwan, filed in proper form on behalf of AK Steel Corporation (petitioner). The CVD petitions were accompanied by six antidumping duty (AD) petitions.[2] The petitioner is a domestic producer of NOES. On October 22, 2013, the Department requested information and clarification for certain areas of the Petitions.[3] The petitioner filed responses to these requests on October 25,[4] and October 30, 2013.[5]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Governments of the PRC (GOC), Korea (GOK), and Taiwan (GOT) are providing countervailable subsidies (within the meaning of sections 701 and 771(5) of the Act) to imports of NOES from the PRC, Korea, and Taiwan, and that such imports are materially injuring, or threaten to cause material injury to, the domestic industry producing NOES in the United States pursuant to section 701 of the Act. Also, consistent with section 702(b)(1) of the Act, the Petitions are accompanied by information reasonably available to petitioner supporting its allegations.

The Department finds that the petitioner filed the Petitions on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act, and that the petitioner has demonstrated sufficient industry support with respect to the initiation of the investigations the petitioner is requesting.[6]

Period of Investigations

The period of the investigations is January 1, 2012, through December 31, 2012.

Scope of Investigations

The product covered by these CVD investigations is NOES from the PRC, Korea, and Taiwan. For a full description of the scope of these investigations, *see* the ''Scope of Investigations'' in Appendix I of this notice.

Comments on Scope of Investigations

During our review of the Petitions, the Department issued questions to, and received responses from, the petitioner pertaining to the proposed scope to ensure that the scope language in the Petitions would be an accurate reflection of the products for which the domestic industry is seeking relief. As discussed in the preamble to the regulations,[7] we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages interested parties to submit such comments by 5:00 p.m. Eastern Time on November 26, 2013. All comments must be filed on the records of the PRC, Korea, and Taiwan CVD investigations, as well as the concurrent PRC, Germany, Japan, Korea, Sweden, and Taiwan AD investigations.

Filing Requirements

All submissions to the Department must be filed electronically using IA ACCESS.[8] An electronically filed document must be received successfully in its entirety by the time and date noted above. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the GOC, the GOK, and the GOT for consultations with respect to the Petitions.[9] Consultations were held with the GOT on October 28, 2013, the GOC on November 4, 2013, and the GOK on November 5, 2013.[10] All memoranda are on file electronically via IA ACCESS.[11]

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the

[1] As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013. *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (October 18, 2013). Therefore, all deadlines in this segment of the proceeding have been extended by 16 days.

[2] *See* Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Non-Oriented Electrical Steel from People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan, dated September 30, 2013 (Petitions).

[3] *See* letter from the Department to petitioner entitled ''Re: Petitions for the Imposition of Antidumping Duties on Imports of Non-Oriented Electrical Steel from the People's Republic of China, the Federal Republic of Germany, Japan, Republic of Korea, Sweden, and Taiwan and Countervailing Duties on Imports of Non-Oriented Electrical Steel from the People's Republic of China, Republic of Korea, and Taiwan: Supplemental Questions, dated October 22, 2013, and letters from the Department to petitioner entitled ''Petition for the Imposition of Countervailing Duties on Imports of Non-Oriented Electrical Steel from {country}: Supplemental Questions'' on each of the country-specific records dated October 22, 2013.

[4] *See* Supplemental to the PRC Petition, dated October 25, 2013 (PRC Supplemental); Supplemental to the Korea Petition, dated October 25, 2013 (Korea Supplemental); and Supplemental to the Taiwan Petition, dated October 25, 2013 (Taiwan Supplemental).

[5] *See* Supplemental to the Japan Petition, dated October 30, 2013 (Japan Supplemental).

[6] *See* ''Determination of Industry Support for the Petitions'' below.

[7] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[8] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using IA ACCESS can be found at *https://iaaccess.trade.gov/help.aspx* and a handbook can be found at *https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[9] *See* Letter of Invitation Regarding Countervailing Duty Petition on Non-Electrical Steel from the People's Republic of China, dated September 30, 2013; Letter of Invitation Regarding Countervailing Duty Petition on Non-Electrical Steel from the Republic of Korea, dated September 30, 2013; Letter of Invitation for Consultations to Discuss the Countervailing Duty Petition Regarding Countervailing Duty Petition on Non-Oriented Electrical Steel from Taiwan, dated September 30, 2013.

[10] *See* Ex-Parte Memorandum, ''Ex-Parte Meeting with Taipei Economic and Cultural Representative Office in the United States on the Countervailing Duty Petition on Non-Oriented Electrical Steel (NOES) from Taiwan,'' dated October 29, 2013; ''Ex-Parte Meeting with Officials from the Government of Korea on the Countervailing Duty Petition on Non-Oriented Electrical Steel from Korea,'' dated November 5, 2013; ''Consultations with Officials from the People's Republic of China (PRC) on the Countervailing Duty Petition on Non-Oriented Electrical Steel from the PRC,'' dated November 5, 2013.

[11] *See supra* note 8 for information pertaining to IA ACCESS.

petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[12] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[13]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petitions).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that NOES constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[14]

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in Appendix I of this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2012.[15] The petitioner states that it is the only producer of NOES in the United States; therefore, the Petitions are supported by 100 percent of the U.S. industry.[16]

On October 28, 2013, we received a submission on behalf of JFE Steel Corporation and Nippon Steel & Sumitomo Metal Corporation, Japanese producers of NOES, questioning the petitioner's industry support calculation. On October 30, 2013, the petitioner responded to the Japanese producers' industry support comments.[17]

Our review of the data provided in the Petitions, supplemental submissions, and other information readily available to the Department indicates that the petitioner has established industry support.[18] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product.[19] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[20] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[21] Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

The Department finds that the petitioner filed the Petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the CVD investigations that it is requesting the Department initiate.[22]

Injury Test

Because the PRC, Korea, and Taiwan are ''Subsidies Agreement Countries'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC, Korea, and/or Taiwan materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. The petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[23]

The petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price depression or

[12] *See* section 771(10) of the Act.

[13] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[14] For a discussion of the domestic like product analysis in this case, *see* Countervailing Duty Investigation Initiation Checklist: Non-Oriented Electrical Steel from the People's Republic of China (PRC CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Petitions Covering Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan (Attachment II); Countervailing Duty Investigation Initiation Checklist: Non-Oriented Electrical Steel from the Republic of Korea (Korea CVD Initiation Checklist), at Attachment II; and Countervailing Duty Investigation Initiation Checklist: Non-Oriented Electrical Steel from Taiwan (Taiwan CVD Initiation Checklist), at Attachment II. These checklists are dated concurrently with this notice and on file electronically via IA ACCESS. Access to documents filed via IA ACCESS is also available in the Central Records Unit, Room 7046 of the main Department of Commerce building.

[15] *See* Volume I of the Petitions, at 2.

[16] *Id.,* at 2 and Exhibit I–1.

[17] For further discussion of these submissions, *see* PRC AD Initiation Checklist, Germany Initiation Checklist, Japan Initiation Checklist, Korea AD Initiation Checklist, Sweden Initiation Checklist, and Taiwan AD Initiation Checklist, at Attachment II.

[18] *See* China CVD Initiation Checklist, Korea CVD Initiation Checklist, and Taiwan CVD Initiation Checklist, at Attachment II.

[19] *Id.; see also* section 702(c)(4)(D) of the Act.

[20] *See* PRC CVD Initiation Checklist, Korea CVD Initiation Checklist, and Taiwan CVD Initiation Checklist, at Attachment II.

[21] *Id.*

[22] *Id.*

[23] *See* Volume I of the Petitions, at 11 and Exhibit I–8.

suppression; lost sales and revenues; and adversely impacted production, capacity utilization, and financial performance.[24] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[25]

Initiation of Countervailing Duty Investigations

Section 702(b)(1) of the Act requires the Department to initiate a CVD investigation whenever an interested party files a CVD petition on behalf of an industry that: (1) Alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. In the Petitions, the petitioner alleges that producers of NOES in the PRC, Korea, and Taiwan benefited from countervailable subsidies bestowed by their respective governments. The Department has examined the Petitions and finds that they comply with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating CVD investigations to determine whether manufacturers, producers, or exporters of NOES from the PRC, Korea, and Taiwan receive countervailable subsidies from their respective governments.

PRC

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation of 30 alleged programs. For a full discussion of the basis for our decision to initiate or not initiate on each program, *see* PRC CVD Initiation Checklist.

Korea

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation of 17 alleged programs. For a full discussion of the basis for our decision to initiate or not initiate on each program, *see* Korea CVD Initiation Checklist.

Taiwan

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation of 6 alleged programs. For a full discussion of the basis for our decision to initiate or not initiate on each program, *see* Taiwan CVD Initiation Checklist.

A public version of the initiation checklist for each investigation is available on IA ACCESS and at *http://trade.gov/enforcement/news.asp.*

Respondent Selection

Petitioner named three companies as producers/exporters of NOES from Korea, two from Taiwan, and 25 from the PRC.[26] Following standard practice in CVD investigations, the Department will, where appropriate, select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of NOES. For Korea and the PRC, we intend to release CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO shortly after the announcement of these case initiations. For Taiwan, the Department intends to examine all known producers/exporters identified in the Petitions in these investigations.[27] The Department invites comments regarding respondent selection within seven days of publication of this **Federal Register** notice.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the representatives of the GOC, GOK, and GOT. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each known exporter (as named in the Petitions), as provided in 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed,[28] whether there is a reasonable indication that imports of NOES from the PRC, Korea, and Taiwan are materially injuring, or threatening material injury to, a U.S. industry.[29] A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to AD and CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all proceeding segments initiated on or after May 10, 2013, and thus are applicable to these investigations. Please review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in these investigations.

Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation

[24] *Id.,* at 9–28 and Exhibits I–6 through I–25.

[25] *See* China CVD Initiation Checklist, Korea CVD Initiation Checklist, and Taiwan CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.

[26] *See* the Petitions at Volume I, Exhibit I–4.

[27] The Petitions name China Steel Corporation and Leicong Industrial Company, Ltd., as producers/exporters of NOES in Taiwan. *See id.*

[28] Due to the shutdown of the Federal Government, the ITC has also tolled its preliminary determination by 16 days, which is Saturday, November 30, 2013. Because November 30 is a Saturday, the actual deadline is Monday, December 2, 2013.

[29] *See* section 703(a) of the Act.

concerning the extension of time limits for submissions in AD and CVD proceedings.[30] The modification clarifies that parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under section 19 CFR 351.408(c), or to measure the adequacy of remuneration under section 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) quantity and value questionnaires. Under certain circumstances, the Department may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Review *Extension of Time Limits; Final Rule,* available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm*, prior to submitting factual information in this segment.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[31] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives, in all segments of any AD or CVD proceedings initiated on or after March 14, 2011.[32] The formats for the revised certifications are provided at the end of the *Interim Final Rule.* Foreign governments and their officials may continue to submit certifications in either the format that was in use prior to the effective date of the *Interim Final Rule,* or in the format provided in the *Interim Final Rule.*[33] The Department intends to reject factual information submissions if the submitting party does not comply with the revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in either investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: November 6, 2013.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigations

The merchandise subject to these investigations consists of non-oriented electrical steel (NOES), which includes cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term ''substantially equal'' in the prior sentence means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.,* the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oesteds) along (*i.e.,* parallel to) the rolling direction of the sheet (*i.e.,* B_{800} value). NOES contains by weight at least 1.25 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum.

NOES is subject to these investigations whether it is fully processed (fully annealed to develop final magnetic properties) or semi-processed (finished to final thickness and physical form but not fully annealed to develop final magnetic properties); whether or not it is coated (*e.g.,* with enamel, varnish, natural oxide surface, chemically treated or phosphate surface, or other non-metallic materials). Fully processed NOES is typically made to the requirements of ASTM specification A 677, Japanese Industrial Standards (JIS) specification C 2552, and/or International Electrotechnical Commission (IEC) specification 60404–8–4. Semi-processed NOES is typically made to the requirements of ASTM specification A 683. However, the scope of these investigations is not limited to merchandise meeting the specifications noted above.

NOES is sometimes referred to as cold-rolled non-oriented electrical steel (CRNO), non-grain oriented (NGO), non-oriented (NO), or cold-rolled non-grain oriented (CRNGO). These terms are interchangeable.

The subject merchandise is provided for in subheadings 7225.19.0000, 7226.19.1000, and 7226.19.9000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also be entered under subheadings 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0180 of the HTSUS. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

[FR Doc. 2013–27316 Filed 11–13–13; 8:45 am]

BILLING CODE 3510–DS–P

[30] *See Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013).

[31] *See* section 782(b) of the Act.

[32] *See Certification of Factual Information for Import Administration during Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (*Interim Final Rule*), amending 19 CFR 351.303(g)(1) and (2).

[33] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC978

South Atlantic Fishery Management Council (SAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting of the South Atlantic Fishery Management Council (Council).

SUMMARY: The Council will hold a Council Member Visioning Workshop and a Council Member Data Workshop. In addition, the Council will hold a joint meeting of the Habitat and Ecosystem-Based Management Committees; Protected Resources Committee, Southeast Data, Assessment and Review Committee (partially CLOSED SESSION); Advisory Panel Selection Committee (CLOSED SESSION); Snapper Grouper Committee; King & Spanish Mackerel Committee; Executive

Finance Committee; Personnel Committee (CLOSED SESSION); Dolphin Wahoo Committee; Data Collection Committee; and a meeting of the Full Council. The Council will take action as necessary. The Council will also hold an informal public question and answer session regarding agenda items and a formal public comment session.

DATES: The Council meeting will be held from 9 a.m. on Monday, December 2, 2013 until 3:00 p.m. on Friday, December 6, 2013.

ADDRESSES: *Meeting Address:* The meeting will be held at the Hilton Wilmington Riverside, 301 North Water Street, Wilmington, NC 28401; phone: 888/324–8170 or (910) 763–5900; fax: (910) 343–6124.

Council Address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The items of discussion in the individual meeting agendas are as follows: 9 a.m. until 9:15 a.m. Swearing in of new Council member.

Council Member Visioning Workshop Agenda, Monday, December 2, 2013, 9:15 a.m. Until 12 Noon

1. Review September 2013 Workshop results and continue discussion of revised Strategic Goal Statements, Goals, and Snapper Grouper Fishery Management Plan (FMP) objectives;
2. Discuss port meetings and provide direction to staff on structure.

Council Member Data Workshop Agenda, Monday, December 2, 2013, 1:30 p.m. Until 5:30 p.m.

1. Presentations on Regional Electronic Monitoring Input for NOAA's Policy on Electronic Technologies and Fishery-Dependent Data Collection, Commercial Quota Monitoring Program, and the Atlantic Coast Cooperative Statistics Program (ACCSP);
2. Hands-on demonstrations for accessing data from ACCSP, decision tools, and Internet Mapping System (IMS).

Joint Habitat and Ecosystem-Based Management Committees Agenda, Tuesday, December 3, 2013, 8:30 a.m. Until 9:30 a.m.

1. Update on the status of Coral Amendment 8 addressing Coral Habitat Areas of Particular Concern (HAPC) and transit through the Oculina Bank HAPC;
2. Briefing on the Coral Reef Cooperative Agreement with the Coral Reef Conservation Program;
3. Report from the November 2013 Habitat and Environmental Protection Advisory Panel meeting and update on Ecosystem Activities, discuss issues take action as appropriate.

Protected Resources Committee Agenda, Tuesday, December 3, 2013, 9:30 a.m. Until 11 a.m.

1. Receive an update on ongoing consultations;
2. Overview of Endangered Species Act (ESA) Working Group Report;
3. Update on American eel; discuss issues and take action as appropriate.

Southeast Data, Assessment and Review (SEDAR) Committee Agenda, Tuesday, December 3, 2013, 10:30 a.m. Until Noon (Note: A portion of this meeting will be CLOSED)

1. Receive a SEDAR activities update. Take Committee action as appropriate;
2. Develop guidance to SEDAR Steering Committee members for the SEDAR process as well as the 2015 assessment priorities; discuss issues and take action as appropriate.
3. Discuss presentation of SEDAR assessments to the SSC;
4. Review the Gag Assessment Update and SEDAR 41 (red snapper and gray triggerfish) Terms of Reference and schedule;
5. Develop recommendations for SEDAR 41 participants (CLOSED SESSION).

Advisory Panel (AP) Selection Committee Agenda, Tuesday, December 3, 2013, 1:30 p.m. Until 2:30 p.m. (CLOSED SESSION)

1. Review advisory panel applications and develop recommendations for appointments/reappointments.

Snapper Grouper Committee Agenda, Tuesday, December 3, 2013, 2:30 p.m. Until 5:30 p.m. and Wednesday, December 4, 2013, 8:30 a.m. Until 5 p.m.

1. Receive update on the status of commercial and recreational catches versus Annual Catch Limits;
2. Receive an update on the status of Snapper Grouper amendments under formal Secretarial review;
3. Receive and discuss reports from the Scientific and Statistical Committee (SSC) and the Snapper Grouper Advisory Panel;
4. Receive presentations on activities relative to the Oculina Bank Experimental Closed area;
5. Address Regulatory Amendment 11 (240′ closure for deepwater species) to the Snapper Grouper FMP if necessary;
6. Receive presentations on Regulatory Amendment 17 addressing marine protected areas (MPAs), review and discuss MPA sites to consider for public scoping, and approve Regulatory Amendment 17 for public scoping meetings;
7. Review Regulatory Amendment 16 (Removal of the black sea bass seasonal pot closure), provide guidance to staff, and approve the amendment for public scoping;
8. Receive an overview of Snapper Grouper Amendment 22 (use of tags to track harvest) and approve Amendment 22 for public scoping;
9. Receive an overview of Snapper Grouper Amendment 29 (management measures for species with Only Reliable Catch Statistics (ORCS), and measures for gray triggerfish), provide guidance to staff, and approve the amendment for public hearings;
10. Review public scoping comments received for Snapper Grouper Amendment 31 (blueline tilefish management measures), provide guidance to staff, approve the amendment for public hearings, and consider an emergency rule request;
11. Review the status of Snapper Grouper Regulatory Amendment 20 (snowy grouper management measures);
12. Receive an overview of the Comprehensive Allocation/Accountability Amendment, provide guidance for species in the snapper grouper management complex, and approve the amendment for public scoping.

The committee will take action as necessary and provide guidance to staff.

Note: There will be an informal public question and answer session with the NMFS Regional Administrator and the Council Chairman on Wednesday, December 4, 2013, beginning at 5:30 p.m.

King & Spanish Mackerel Committee Agenda, Thursday, December 5, 2013, 8:30 a.m. Until 10:30 a.m.

1. Receive and discuss the status of commercial and recreational catches versus ACLs for Atlantic group king mackerel, Spanish mackerel and cobia;
2. Receive an update on the status of amendments under formal Secretarial review;
3. Receive an overview of Joint South Atlantic/Gulf of Mexico Mackerel Amendment 20B (trip limits, fishing seasons, transit provisions, framework procedure, cobia ACLs), develop recommendations for approving the amendment for formal Secretarial

review, and deem the codified text as necessary and appropriate;

4. Receive an overview of Joint Gulf/South Atlantic Mackerel Framework Action 2014 (Spanish mackerel Acceptable Biological Catch (ABC) and ACL), review SSC recommendations for Spanish mackerel ABC, select preferred alternatives, modify the amendment as necessary and approve for public hearings;

5. Review options papers for Joint Gulf/South Atlantic Amendment 24 (Allocations) and Joint Amendment 26 (Separate commercial permits), provide guidance to staff, and approve the amendments for public scoping;

6. Receive an overview of other actions from the Gulf Council and take action as necessary.

Executive Finance Committee Agenda, Thursday, December 5, 2013, 10:30 a.m. Until 11:30 a.m.

1. Receive an update on the status of Council calendar year (CY) 2013 budget expenditures and the proposed CY 2014 budget;

2. Receive an update on Joint Committee on South Florida Management Issues and the AdHoc Goliath Grouper Joint Council Steering Committee Activities;

3. Review and approve the Regional Operating Agreement;

4. Receive a report on the Council Coordinating Committee meeting;

5. Discuss Council Follow-up and Priorities and take action other issues as appropriate.

Personnel Committee Agenda (CLOSED SESSION), Thursday, December 5, 2013, 11:30 a.m. Until 12 Noon.

1. Executive Director performance review.

Dolphin Wahoo Committee Agenda, Thursday, December 5, 2013, 1:30 p.m. Until 2:30 p.m.

1. Receive update on the status of commercial and recreational catches versus Annual Catch Limits;

2. Receive an update on the status of Amendment 5 to the Dolphin Wahoo FMP (modifications to ABC, ACLs);

3. Review public hearing comments on Dolphin Wahoo Amendment 7 (allow filleted dolphin and wahoo from the Bahamas), modify the amendment as appropriate, and approve for formal Secretarial review;

4. Review the Comprehensive Allocation Amendment, provide guidance to staff, and approve the amendment for public scoping.

Data Collection Committee Agenda, Thursday, December 5, 2013, 2:30 p.m. Until 5 p.m.

Receive an update on the status of the following amendments: Joint South Atlantic/Gulf Generic Dealer Permit Amendment, Joint South Atlantic/Gulf Generic For-Hire Reporting Amendment (South Atlantic portion only), and Gulf Framework for For-Hire Reporting:

1. Discuss Comprehensive Ecosystem-Based Amendment 3 (Bycatch);

2. Receive an update on the Commercial Electronic Logbook Pilot Study;

3. Receive an overview of Gulf actions for the Gulf Generic Charterboat Reporting Amendment. Provide guidance to staff and take action as appropriate.

Note: A formal public comment session will be held on Thursday, December 5, 2013, beginning at 5:30 p.m. on the following items scheduled for final Council action at this meeting: (1) Joint SA/Gulf Mackerel Amendment 20B, and (2) Amendment 7 to the Dolphin Wahoo FMP. Following comment on these specific items, public comment will be accepted regarding any other items on the Council agenda. The amount of time provided to individuals will be determined by the Chairman based on the number of individuals wishing to comment.

Council Session: Friday, December 6, 2013, 8:30 a.m. Until 3 p.m.

Council Session Agenda, Friday, December 6, 2013, 8:30 a.m. until 3 p.m.

8:30 a.m.–8:45 a.m.: Call the meeting to order, adopt the agenda, and approve the September 2013 meeting minutes.

8:45–9:15 a.m.: The Council will receive a report from the Snapper Grouper Committee and is scheduled to either approve or disapprove Amendment 29 and Amendment 31 for public hearings and approve or disapprove Amendment 22, Regulatory Amendment 16, Regulatory Amendment 17, and the Generic Allocation/Accountability Measure Amendment (relative to snapper grouper) for public scoping. The Council will consider other committee recommendations and take action as appropriate.

9:15–9:45 a.m.: The Council will receive a report from the King & Spanish Mackerel Committee and is scheduled to approve or disapprove Amendment 20B to the Coastal Migratory Pelagic Species FMP for formal Secretarial review. The Council will also approve or disapprove the South Atlantic Spanish Mackerel Framework for public hearings and Joint South Atlantic/Gulf Amendment 24 and Amendment 26 for public scoping. The Council will consider other Committee recommendations and take action as appropriate.

9:45–10 a.m.: The Council will receive a report from the Dolphin Wahoo Committee and is scheduled to either approve or disapprove Dolphin Wahoo Amendment 7 for formal Secretarial review. The Council will approve or disapprove the Generic Allocation/Accountability Measure Amendment (relative to dolphin wahoo) for public scoping. The Council will consider other Committee recommendations and take action as appropriate.

10–10:15 a.m.: The Council will receive a report from the Council Visioning Workshop, consider recommendations, and take action as appropriate.

10:15–10:30 a.m.: The Council will receive a report from the Council Member Data Workshop, consider recommendations, and take action as appropriate.

10:30–10:45 a.m.: The Council will receive a report from the Joint Habitat/Ecosystem-Based Management Committees, consider recommendations and take action as appropriate.

10:45–11 a.m.: The Council will receive a report from the Protected Resources Committee, consider recommendations and take action as appropriate.

11–11:15 a.m.: The Council will receive a report from the SEDAR Committee, approve participants for SEDAR 41, consider other recommendations and take action as appropriate.

11:15–11:30 a.m.: The Council will receive a report from the Advisory Panel Selection Committee, consider recommendations for appointment or reappointment of AP members, and take action as appropriate. The Council will consider other recommendations and take action as appropriate.

11:30–11:45 a.m.: The Council will receive a report from the Executive Finance Committee, approve the Council Follow-Up and Priorities, take action relative to South Florida Management issues as appropriate, approve the Regional Operating Agreement, and consider recommendations and take action as appropriate.

11:45–12 Noon: The Council will receive a report from the Data Collection Committee, approve or disapprove the South Atlantic/Gulf of Mexico Generic Dealer Permit Amendment for formal Secretarial review, and consider other recommendations and take action as appropriate.

1:30–3 p.m.: The Council will receive an update on the Marine Resources

Education Program Southeast; status reports from NOAA Fisheries Southeast Regional Office and the Southeast Fisheries Science Center; review agency and liaison reports; and discuss other business and upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 8, 2013.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–27225 Filed 11–13–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC886

Marine Fisheries Advisory Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of open public meeting.

SUMMARY: This notice sets forth the proposed schedule and agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee (MAFAC). The members will discuss and provide advice on issues outlined under **SUPPLEMENTARY INFORMATION** below.

DATES: The meeting will be held December 3–5, 2013 from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Silver Spring Civic Center, One Veterans Plaza, Silver Spring, MD 20910; 240–777–5350.

FOR FURTHER INFORMATION CONTACT: Mark Holliday, MAFAC Executive Director; (301) 427–8004; email: *Mark.Holliday@noaa.gov.*

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given of a meeting of MAFAC. The MAFAC was established by the Secretary of Commerce (Secretary), and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The complete charter and summaries of prior meetings are located online at *http://www.nmfs.noaa.gov/ocs/mafac/.*

Matters To Be Considered

This meeting time and agenda are subject to change.

The meeting is convened to hear presentations and discuss policies and guidance on the following topics: Seafood certification and sustainability, Endangered Species Act and section 7 consultations, outcomes of the Managing Our Nation's Fisheries 3 conference and next steps, recreational fisheries issues, and the NMFS budget. The meeting will include discussion of various MAFAC administrative and organizational matters and may include meetings of the standing subcommittees.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mark Holliday, MAFAC Executive Director; 301–427–8004 by November 22, 2013.

Dated: November 7, 2013.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–27284 Filed 11–13–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Trademark Trial and Appeal Board (TTAB) Actions

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on this continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 13, 2014.

ADDRESSES: You may submit comments by any of the following methods:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0040 comment'' in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to LaToya Brown, Technical Quality Review Analyst, Trademark Trial and Appeal Board, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–4283; or by email to *LaToya.Brown@uspto.gov* with ''Paperwork'' in the subject line. Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is required by the Trademark Act of 1946, Sections 13, 14, and 20, 15 U.S.C. 1063, 1064, and 1070, respectively. Under the Trademark Act, any individual or entity that adopts a trademark or service mark to identify its goods or services may apply to federally register its mark. Section 14 of the Trademark Act allows individuals and entities to file a petition to cancel a registration of a mark, while Section 13 allows individuals and entities who believe that they would be damaged by the registration of a mark to file an opposition, or an extension of time to file an opposition, to the registration of a mark. Section 20 of the Trademark Act allows individuals and entities to file an appeal from any final decision of the Trademark Examining Attorney assigned to review an application for registration of a mark.

The USPTO administers the Trademark Act pursuant to 37 CFR Part 2, which contains the various rules that govern the filing of petitions to cancel the registration of a mark, notices of opposition to the registration of a mark, extensions of time to file an opposition, appeals, and other papers filed in connection with inter partes and ex partes proceedings. These petitions, notices, extensions, and additional papers are filed with the Trademark Trial and Appeal Board (TTAB), an administrative tribunal empowered to determine the right to register and subsequently determine the validity of a trademark.

The information in this collection can be submitted in paper format or electronically through the Electronic System for Trademark Trials and Appeals (ESTTA). There are no paper forms associated with this collection. However, the TTAB has suggested formats for the Petition to Cancel and the Notice of Opposition that individuals and entities can use when submitting these petitions and notices to the TTAB. These are not forms and, as such, do not have form numbers. If applicants or entities wish to submit the petitions, notices, extensions, and additional papers in inter partes and ex parte cases electronically, they must use the forms provided through ESTTA. Oppositions to extensions of protection under the Madrid Protocol, as well as requests for extensions to oppose, must be filed electronically through ESTTA. This collection contains two suggested formats and six electronic forms.

The additional papers filed in inter partes and ex parte proceedings can be filed in paper or electronically. Although the number of paper filings is decreasing in favor of electronic filings, there still are a small percentage of paper submissions.

The information in this collection is a matter of public record, and is used by the public for a variety of private business purposes related to establishing and enforcing trademark rights. This information is important to the public, as both common law trademark owners and federal trademark registrants must actively protect their own rights.

II. Method of Collection

By mail, hand delivery, or electronically through ESTTA when a party files a petition to cancel a trademark registration, an opposition to the registration of a trademark, a request to extend the time to file an opposition, a notice of appeal, or additional papers for inter partes and ex parte proceedings with the USPTO. However, notices of opposition and extensions of time to file notices of opposition against the extensions of protection under the Madrid Protocol must be filed electronically through ESTTA. Only notices of appeal for ex parte appeals can be submitted by facsimile, in accordance with 37 CFR 2.195(d)(3).

III. Data

OMB Number: 0651–0040.

Form Number(s): PTO 2120, 2151, 2153, 2188, 2189, and 2190.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for profits; non-profit institutions.

Estimated Number of Respondents: 76,017 responses per year. Of this total, the USPTO estimates that approximately 92% (70,100) will be filed electronically.

Estimated Time per Response: The USPTO estimates that it will take the public from 10 to 30 minutes (0.17 to 0.50 hours), depending on the complexity of the situation, to gather the necessary information, prepare the appropriate documents, and submit the information required for this collection.

Estimated Total Annual Respondent Burden Hours: 15,524 hours per year.

Estimated Total Annual Respondent Cost Burden: $3,974,144. The USPTO estimates that it will take a 50/50 level of effort by attorneys and paraprofessional/paralegals to complete the requirements in this collection. The hourly rate for attorneys is $389, while the hourly rate for paraprofessional/paralegals is $122. After calculating the average of these rates, the USPTO estimates that the hourly rate for completing the petitions, notices, requests, and other papers will be $256. Using this hourly rate, the USPTO estimates that the total respondent cost burden for this collection will be $3,974,144 per year.

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Petition to Cancel	30	77	39
Electronic Petition to Cancel	30	1,500	750
Notice of Opposition	30	140	70
Electronic Notice of Opposition	30	5,500	2,750
Extension of Time to File an Opposition	10	70	12
Electronic Request for Extension of Time to File an Opposition	10	17,000	2,890
Papers in Inter Partes Cases	10	3,100	527
• Answers			
• Amendments to Pleadings			
• Amendment of Application or Registration During Proceeding			
• Motions (such as consent motions, motions to extend, motions to suspend, etc.)			
• Evidence			
• Briefs			
• Surrender of Registration			
• Abandonment of Application			
• Documents Related to Concurrent Use Applications			
• Notice of Intent to Appeal a TTAB decision			
Electronic Papers in Inter Partes Cases	10	37,000	6,290
• Answers			
• Amendments to Pleadings			
• Amendment of Application or Registration During Proceeding			
• Motions (such as consent motions, motions to extend, motions to suspend, etc.)			
• Evidence			
• Briefs			
• Surrender of Registration			
• Abandonment of Application			
• Documents Related to Concurrent Use Applications			
• Notice of Intent to Appeal a TTAB decision			

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Notice of Appeal	15	130	33
Electronic Notice of Appeal	15	2,600	650
Miscellaneous Ex Parte Papers	10	2,400	408
Electronic Miscellaneous Ex Parte Papers	10	6,500	1,105
Totals	....	76,017	15,524

Estimated Total Annual (Non-hour) Respondent Cost Burden: $2,453,224. There are no capital start-up, maintenance, or record keeping costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of postage as well as filing fees.

The petitions to cancel, the notices of opposition and appeal, the extensions of time to file an opposition, and the additional papers filed in inter partes and ex partes cases may be submitted to the USPTO or served on other parties by Express or first-class mail through the United States Postal Service. These papers can also be hand delivered to the TTAB. The USPTO estimates that 6% of the petitions, notices, extensions, and additional inter partes and ex parte papers that are filed in paper will be submitted using Express Mail. The USPTO estimates that the average submission will weigh 2 ounces and that the respondent will be mailing the original to the TTAB and serving copies on the other parties involved in the proceedings. The USPTO estimates that it costs an average of $19.95 for a standard flat rate envelope to send the petitions, notices, extensions, appeals, and additional papers by Express Mail to the TTAB. To account for the service of papers on other parties, the USPTO is adding an additional 20% of the postage rate ($4) for an estimated cost of $23.95.

The USPTO estimates the remaining petitions to cancel, the notices of opposition and appeal, the extensions of time to file an opposition, and the additional papers filed in inter partes and ex parte proceedings that are filed in paper (roughly 94%) will be sent by first-class mail. The USPTO estimates that the average submission will weigh 2 ounces and that the respondent will mail the original to the TTAB and serve copies on the other parties involved in the proceedings. The USPTO estimates that it costs 66 cents to mail the petitions, notices, extensions, appeals, and additional papers to the TTAB. To account for the service of papers on other parties, the USPTO is adding an additional 80% of the postage rate (53 cents) for an estimated cost of $1.19.

Item	Responses (a)	Postage costs ($) (b)	Total non-hour cost burden (a x b) (c)
Petition to Cancel	77	....	$206.00
6% @ $23.95	....	120.00	....
94% @ $1.19	....	86.00	....
Notice of Opposition	140	....	349.00
6% @ $23.95	....	192.00	....
94% @ $1.19	....	157.00	....
Extension of Time to File an Opposition	70	....	175.00
6% @ $23.95	....	96.00	....
94% @ $1.19	....	79.00	....
Papers in Inter Partes Cases	3,100	....	7,923.00
• Answers			
• Amendments to Pleadings			
• Amendment of Application or Registration During Proceeding			
• Motions (such as consent motions, motions to extend, motions to suspend, etc.)			
• Evidence			
• Briefs			
• Surrender of Registration			
• Abandonment of Application			
• Documents Related to Concurrent Use Applications			
• Notice of Intent to Appeal a TTAB decision			
6% @ $23.95	....	4,455.00	....
94% @ $1.19	....	3,468.00	....
Notice of Appeal	130	....	337.00
6% @ $23.95	....	192.00	....
94% @ $1.19	....	145.00	....
Miscellaneous Ex Parte Papers	2,400	....	6,134.00
6% @ $23.95	....	3,449.00	....
94% @ $1.19	....	2,685.00	....
Totals	5,917	....	15,124.00

Therefore, the USPTO estimates that the total postage cost for this collection is 15,124 per year.

There is also annual nonhour cost burden in the way of filing fees associated with this collection. The petitions to cancel and the notices of opposition and appeal have filing fees. There are no filing fees for the remaining items in the collection. The filing fees for the petitions to cancel, notices of opposition, and notices of appeal are per class of goods and services in the subject application or registration; therefore the total filing fees can vary depending on the number of classes. The total filing fees of 2,438,100.00 shown here are the minimum fees associated with this information collection.

Item	Responses (a)	Filing fee ($) (b)	Total non-hour cost burden (a × b) (c)
Petition to Cancel	77	$300.00	$23,100.00
Electronic Petition to Cancel	1,500	300.00	450,000.00
Notice of Opposition	140	300.00	42,000.00
Electronic Notice of Opposition	5,500	300.00	1,650,000.00
Extension of Time to File an Opposition	70	0.00	0.00
Electronic Request for Extension of Time to File an Opposition	17,000	0.00	0.00
Papers in Inter Partes Cases	3,100	0.00	0.00
• Answers			
• Amendments to Pleadings			
• Amendment of Application or Registration During Proceeding			
• Motions (such as consent motions, motions to extend, motions to suspend, etc.)			
• Evidence			
• Briefs			
• Surrender of Registration			
• Abandonment of Application			
• Documents Related to Concurrent Use Applications			
• Notice of Intent to Appeal a TTAB decision			
Electronic Papers in Inter Partes Cases	37,000	0.00	0.00
• Answers			
• Amendments to Pleadings			
• Amendment of Application or Registration During Proceeding			
• Motions (such as consent motions, motions to extend, motions to suspend, etc.)			
• Evidence			
• Briefs			
• Surrender of Registration			
• Abandonment of Application			
• Documents Related to Concurrent Use Applications			
• Notice of Intent to Appeal a TTAB Decision			
Notice of Appeal (Ex parte)	130	100.00	13,000.00
Electronic Notice of Appeal (Ex parte)	2,600	100.00	260,000.00
Miscellaneous Ex Parte Papers	2,400	0.00	0.00
Electronic Miscellaneous Ex Parte Papers	6,500	0.00	0.00
Totals	76,017	....	2,438,100.00

The USPTO estimates that the total (non-hour) respondent cost burden for this collection, in the form of postage costs and filing fees, is 2,453,224 per year.

IV. Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

The USPTO is soliciting public comments to: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: November 8, 2013.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2013–27214 Filed 11–13–13; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Patent Trial and Appeal Board (PTAB) Actions (Formerly Board of Patent Appeals and Interferences (BPAI) Actions)

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing efforts to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on this revision of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 13, 2014.

ADDRESSES: You may submit comments by any of the following methods:

- *Email: InformationCollection@uspto.gov*. Include ''0651–0063 comment'' in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Linda Horner, Acting Vice Chief Judge, Patent Trial and Appeal Board, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–9797; or by email to *linda.horner@uspto.gov*. Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

The Patent Trial and Appeal Board (PTAB or Board) is established by statute under 35 U.S.C. 6. This statute directs that PTAB ''shall on written appeal of an applicant, review adverse decisions of examiners upon applications for patent and shall determine priority and patentability of invention in interferences.'' PTAB has the authority, under pre-AIA sections of the Patent Act, i.e., 35 U.S.C. 134, 135, 306, and 315, to decide ex parte and inter partes appeals and interferences. In addition, 35 U.S.C. 6 establishes the membership of PTAB as the Director, the Deputy Director, the Commissioner for Patents, the Commissioner for Trademarks, and the Administrative Patent Judges. Each appeal and interference is decided by a merits panel of at least three members of the Board.

Two of the Board's responsibilities under the statute include the review of ex parte appeals from adverse decisions of examiners in those situations where a written appeal is taken by a dissatisfied applicant, and the administration of interferences to ''determine priority'' (or decide who is the first inventor) whenever an applicant claims the same patentable invention that is already claimed by another applicant or patentee. In inter partes reexamination appeals, PTAB reviews examiner's decisions adverse to a patent owner or a third-party requestor.

PTAB's opinions and decisions for publicly available files are published on the USPTO Web site.

There are no forms associated with these items. However, they are governed by rules in Part 41. Failure to comply with the appropriate rule may result in dismissal of the appeal or denial of entry of the paper.

The USPTO is adding an existing information requirement, the Petitions to the Chief Administrative Patent Judge, into this information collection. This requirement is currently covered under information collection 0651–0072 America Invents Act Section 10 Patent Fee Adjustments. At the time of the publication of the USPTO rulemaking, ''Setting and Adjusting Patent Fees'' (RIN 0651–AC54), the petitions to the Chief Administrative Patent Judge were not covered by any existing information collection request, so it was included in the 0651–0072 submission because the fee associated with this petition was affected by the rulemaking. As part of this renewal, the USPTO is moving this information requirement into this collection because it is associated with the activities covered by this collection. However, only the information requirement and the non-fee burden for the petitions will be moved into 0651–0063. The fee will remain in 0651–0072.

II. Method of Collection

By mail, hand delivery, or facsimile when an applicant files a brief, petition, amendment, or request. These papers can also be filed as attachments through EFS-Web.

III. Data

OMB Number: 0651–0063.

Form Number(s): None.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, businesses or other for profits, non-profit institutions, and the Federal Government.

Estimated Number of Respondents: 34,537 responses per year. The USPTO estimates that approximately 25% (8,634) of these responses will be from small entities. The USPTO also estimates that approximately 93% (32,119) of the briefs, requests, petitions, and amendments will be filed electronically.

Estimated Time per Response: The USPTO estimates that it takes the public approximately 2 to 32 hours to complete this information, depending on the complexity of the request. This includes the time to gather the necessary information, prepare the brief, petition, and other papers, and submit the completed request to the USPTO. The USPTO calculates that, on balance, it takes the same amount of time to gather the necessary information, prepare the brief, petition, and other papers, and submit it to the USPTO, whether the applicant submits it in paper form or electronically.

Estimated Total Annual Respondent Burden Hours: 858,683 hours per year.

Estimated Total Annual Respondent Cost Burden: $334,027,687 per year. The USPTO expects that all of the information in this collection will be prepared by an attorney. Using the professional hourly rate of $389 for attorneys in private firms, the USPTO estimates that the total respondent cost burden for this collection is $334,027,687 per year.

Item	Estimated time for response (hours)	Estimated annual responses	Estimated annual burden hours
Amendment	2	19	38
Electronic Amendment	2	248	496
Appeal Brief	32	1,781	56,992
Electronic Appeal Brief	32	23,662	757,184
Reply Brief	5	578	2,890
Electronic Reply Brief	5	7,672	38,360
Request for Rehearing Before the PTAB	5	29	145
Electronic Request for Rehearing Before the PTAB	5	386	1,930
Petitions to the Chief Administrative Patent Judge Under 37 CFR 41.3	4	11	44

Item	Estimated time for response (hours)	Estimated annual responses	Estimated annual burden hours
Electronic Petitions to the Chief Administrative Patent Judge Under 37 CFR 41.3	4	151	604
Total		34,537	858,683

Estimated Total Annual Non-hour Respondent Cost Burden: $48,239 per year. There are no maintenance, operation, capital start-up, or recordkeeping costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of postage costs. There are also filing fees for the appeal briefs and the petitions to the chief administrative patent judge, but these fees are not included in the annual (non-hour) cost burden for this collection. These fees are covered instead under 0651–0072 America Invents Act Section 10 Patent Fee Adjustments.

The briefs, petitions, and other papers may be submitted by mail through the United States Postal Service. The USPTO expects the items in this collection to be mailed by Express Mail using the flat rate envelope, which can accommodate both the varying submission weights of these submissions and the various postal zones. Using the Express Mail flat rate cost for mailing envelopes, the USPTO estimates that the average cost for sending these submissions by Express Mail will be $19.95 and that approximately 2,418 may be mailed to the USPTO.

The USPTO estimates that the total postage cost for this collection will be $48,239 per year.

Item	Responses	Postage cost	Total postage cost
Express Mailing Costs			
Amendment	19	$19.95	$379.00
Appeal Brief	1,781	19.95	35,531.00
Reply Brief	578	19.95	11,531.00
Request for Rehearing Before the PTAB	29	19.95	579.00
Petitions to the Chief Administrative Patent Judge Under 37 CFR 41.3	11	19.95	219.00
Total Postage Costs	2,418		48,239.00

IV. Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

The USPTO is soliciting public comments to: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: November 8, 2013.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2013–27215 Filed 11–13–13; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 78, No. 217, Friday, November 8, 2013, page 67130.

ANNOUNCED TIME AND DATE OF OPEN MEETING: 10 a.m.–12 p.m., Wednesday, November 13, 2013.

CHANGES TO OPEN MEETING AGENDA:. *Matter To Be Considered:* Decisional Matter—Voluntary Recall Notice NPR.

Item Removed From the Agenda: Decisional Matters: FY 2014 Operating Plan.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: November 12, 2013.

Todd A. Stevenson,

Secretary.

[FR Doc. 2013–27389 Filed 11–12–13; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, November 20, 2013, 10:00 a.m.–12:00 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

Matter To Be Considered

Decisional Matter: FY 2014 Operating Plan.

A live Web cast of the Meeting can be viewed at *www.cpsc.gov/live*.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: November 12, 2013.

Todd A. Stevenson,

Secretary.

[FR Doc. 2013–27390 Filed 11–12–13; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0208]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by December 16, 2013.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION: *Title, Associated Form and OMB Number:* Information Assurance Scholarship Program; OMB Control Number 0704–TBD.

Type of Request: New.

Number of Respondents: 493.

Responses per Respondent: 1.

Annual Responses: 493.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 123.5 hours.

Needs and Uses: The National Security Agency (NSA) is the Executive Administrator of the DoD Information Assurance Scholarship Program (IASP), serving on behalf of DoD Chief Information Officer. Those who wish to participate in the DoD IASP Recruitment program must complete and submit an application package through their college or university to NSA. Centers of Academic Excellence in Information Assurance and Research (CAEs) interested in applying for capacity-building grants must complete and submit a written proposal, and all colleges and universities subsequently receiving grants must provide documentation on how the grant funding was utilized and the resulting accomplishments. Without this written documentation, the DoD has no means of judging the quality of applicants to the program or collecting information regarding program performance. In addition, the DoD IASP participants and their faculty advisors (Principal Investigators) are asked to complete annual program assessment surveys. These surveys are collectively reviewed to assess the program's effectiveness from the perspective of the students and Principal Investigators. The survey information is used to improve the program in subsequent years.

Affected Public: Individuals or households, specifically college students at institutions designated as CAEs who are interested in, and qualify to apply for a scholarship; CAEs interested in submitting proposals for capacity-building grants, and faculty advisors (Principal Investigators).

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: November 8, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–27250 Filed 11–13–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the National Commission on the Structure of the Air Force

AGENCY: Director of Administration and Management, DoD.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal advisory committee closed meeting of the National Commission on the Structure of the Air Force (''the Commission'') has taken place. Due to difficulties finalizing the meeting agenda for the scheduled meeting of the National Commission on the Structure of the Air Force for November 12, 2013, this meeting notice is publishing in the **Federal Register** after the date of the meeting.

DATES: *Dates of Closed Meeting, including Hearing and Commission Discussion:* Tuesday, November 12, 2013, from 1:00 p.m. to 5:00 p.m.

ADDRESSES: 2521 South Clark Street, Suite 525, Crystal City, VA 22202 and a secure video teleconferencing line.

FOR FURTHER INFORMATION CONTACT: Mrs. Marcia Moore, Designated Federal Officer, National Commission on the Structure of the Air Force, 1950 Defense Pentagon, Room 3A874, Washington, DC 20301–1950. Email: *marcia.l.moore12.civ@mail.mil*. Desk (703) 545–9113. Facsimile (703) 692–5625.

SUPPLEMENTARY INFORMATION: *Purpose of Meeting:* This meeting was held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. This meeting was the second in a series of three meetings held for the Commissioners to consider information and data from a variety of sources that will be presented and aggregated by employing several data, analytic and decision support tools that contain classified information.

Agenda: The agenda items were:

—The role of airpower in the post-Afghanistan national security situations likely to be encountered by the Air Force capabilities and Airmen and the implications for the structure of the Air Force. This discussion will be organized into three categories. The ''Away Game,'' will involve emerging demands on Air Force capabilities such as: Intelligence, Surveillance and reconnaissance, Remotely Piloted Aircraft, Space, Cyber, Special Operations, and Building Partnership Capacity. Commissioners will also explore the implications of rising demands and expectations for the ''Home Game'' in missions such as Homeland Defense, Homeland Security, and Defense Support to Civil Agencies. This will include implications for the structure of the Air Force from the growing threat of the ''Away Game'' involving simultaneous attacks on the Homeland. The third area of discussion will be on the continuing growth of demand on traditional Air Force core functions including: Air Superiority, Air Mobility, Global Precision Attack, Nuclear Deterrence Operations, Command and Control, Personnel Recovery, Agile Combat Support, Training and Education, and other specific mission sets such as security forces, civil engineering and science and technology.

— Projections and assumptions about future resource levels that will be available to organize, train and equip the Air Force. This will include assumptions about how the Budget Control Act and Sequestration legislation will affect Total Obligational Authority and associated planning, programming and budgeting flexibility. Commissioners will also consider the impact of strategic choices on Air Force capabilities and force structure options derived from the selection of national priorities among modernization, technology, recapitalization, readiness, capacity and force structure. In this discussion Commissioners will consider the various approaches to how to calculate and apply cost methods and data to questions of force structure.

—The root causes of legislative and bureaucratic development of the force structure issues that led to the creation of the Commission in 2013. They will consider how these issues are rooted in the American militia heritage and the history of the Air Force since 1947. This discussion will extend to accounting for the socio-cultural dimensions of force structure issues ranging from the fundamental relationship of the American people to their military and to sub-cultures within the Air Force.

—How to institutionalize the shift in the fundamental role of the reserve components from a strategic reserve to an operational reserve with associated expectations. Commissioners will also consider the force mix options they are prepared to assess in terms of relative weight of force structure in each of the components. Commissioners will consider whether to recommend that the Department of Defense invert the force sizing planning paradigm from sizing to meet the expected wartime surge to an approach that begins with the Steady State Requirement then resource the components to provide the nation with a meaningful surge capacity for the strategy. They will also address considerations for measuring and assessing Active, Reserve and Guard Effectiveness—both cost and mission effectiveness.

—Alternative approaches to how the nation should direct, control and guide the active, reserve and National Guard Air Forces, including:

Whether, and if so how, to simplify Title 10, Title 32 and other governing legislative authorities;

How to re-balance the current mix of Active, Reserve and Guard components into and across any and all mission functions;

Whether, and if so how, to reorganize the Air Force Active, Reserve and National Guard into less than 3 components;

Can the Air Force move to a periodic readiness schedule without creating a ''hollow force;''

Does component ''ownership'' of aircraft matter anymore and how can the Associate Unit paradigm be adapted to the future;

Approaching future force integration of new systems capabilities by means of a Concurrent Proportional resourcing method across the components to replace today's priority of equipping the Active Component first;

Accelerating the adoption of a ''Continuum of Service'' model to facilitate the ability of Airmen to move from any component into another at multiple points in their career path without prejudice;

Enhancing the total force through equalized opportunities across the components for professional and technical education and shared experiences.

Recognizing in promotion and selection processes differing but equivalent ends, ways, and means of professional development.

Fundamental shift in policy goals for ''Deploy-to-Dwell,'' ''Mobilization-to-Dwell,'' and associated metrics for the post-Afghanistan period, as well as how deployment credit will be accounted.

Reconsider the nation's needs for Overseas Basing and the capacity of continental United States' infrastructure afforded by investments in Reserve and Guard basing capacities available to the Total Force.

Meeting Accessibility: In accordance with section 10(d) of the FACA, 5 U.S.C. 552b, and 41 CFR 1102–3.155, the DoD has determined that the meeting scheduled for November 12, 2013 was closed to the public in its entirety. Specifically, the Director of Administration and Management, with the coordination of the DoD FACA Attorney, has determined in writing that this meeting was closed to the public because it discussed classified information and matters covered by 5 U.S.C. 552b(c)(1).

Written Comments: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, the public or interested organizations may submit written comments to the Commission in response to the stated agenda of the open and/or closed meeting or the Commission's mission. The Designated Federal Officer (DFO) will review all submitted written statements before forwarding to the Commission. Written comments should be submitted to Mrs. Marcia Moore, DFO, via facsimile or electronic mail, the preferred modes of submission. Each page of the comment must include the author's name, title or affiliation, address, and daytime phone number. All contact information may be found in the **FOR FURTHER INFORMATION CONTACT** section. While written comments are forwarded to the Commissioners upon receipt, note that all written comments on the Commission's charge, as described in the 'Background' section, must be received by November 29, 2013, via email or fax, to be considered by the Commissioners for the final report. The postmark date was November 8, 2013.

Due to difficulties finalizing the meeting agenda for the scheduled meeting of the National Commission on the Structure of the Air Force for November 12, 2013, the requirements of 41 CFR 102–3.150(a) were not met. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waived the 15-calendar day notification requirement.

Background

The National Commission on the Structure of the Air Force was established by the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239). The Department of Defense sponsor for the Commission is the Director of Administration and Management, Mr. Michael L. Rhodes. The Commission is tasked to submit a report, containing a comprehensive study and recommendations, by February 1, 2014 to the President of the United States and the Congressional defense committees. The report will contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions it may consider appropriate in light of the results of the study. The comprehensive study of the structure of the U.S. Air Force will determine whether, and how, the structure should be modified to best fulfill current and anticipated mission requirements for the U.S. Air Force in a manner consistent with available resources.

The evaluation factors under consideration by the Commission are for a U.S. Air Force structure that—(a) meets current and anticipated requirements of the combatant commands; (b) achieves an appropriate balance between the regular and reserve components of the Air Force, taking advantage of the unique strengths and capabilities of each; (c) ensures that the regular and reserve components of the Air Force have the capacity needed to support current and anticipated homeland defense and disaster assistance missions in the United States; (d) provides for sufficient numbers of regular members of the Air Force to provide a base of trained personnel from which the personnel of the reserve components of the Air Force could be recruited; (e) maintains a peacetime rotation force to support operational tempo goals of 1:2 for regular members of the Air Forces and 1:5 for members of the reserve components of the Air Force; and (f) maximizes and appropriately balances affordability, efficiency, effectiveness, capability, and readiness.

Dated: November 8, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–27270 Filed 11–13–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0113]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Student Assistance General Provisions—Satisfactory Academic Progress Policy

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before December 16, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0113 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103,Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Kate Mullan, 202–401–0563 or electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Student Assistance General Provisions—Subpart K—Verification Student Aid Application Information.

OMB Control Number: 1845–0108.

Type of Review: Extension without change of an existing collection of information.

Respondents/Affected Public: Private sector, State, Local, or Tribal Governments, individuals or households.

Total Estimated Number of Annual Responses: 37,160,441.

Total Estimated Number of Annual Burden Hours: 1,627,616.

Abstract: This request is for an extension of the current approval of the policies and procedures for determining satisfactory academic progress (SAP) as required in Section 484 of the Higher Education Act of 1965, as amended (HEA). These regulations identify the policies and procedures to ensure that students are making satisfactory academic progress in their program at a pace and a level to receive or continue to receive Title IV, HEA program funds. If there is lapse in progress, the policy must identify how the student will be notified and what steps are available to a student not making satisfactory academic progress toward the completion of their program, and under what conditions a student who is not making satisfactory academic progress may continue to receive Title IV, HEA program funds.

Dated: November 8, 2013.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–27267 Filed 11–13–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0118]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for Approval To Participate in Federal Student Financial Aid Programs

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before December 16, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0118 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103,Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Kate Mullan, 202–401–0563 or electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for Approval To Participate in Federal Student Financial Aid Programs.

OMB Control Number: 1845–0012.

Type of Review: Extension without change of an existing collection of information.

Respondents/Affected Public: Private Sector, State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 7,286.

Total Estimated Number of Annual Burden Hours: 24,352.

Abstract: The Higher Education Act of 1965, as amended requires postsecondary institutions to complete and submit this application as a condition of eligibility for any of the Title IV student financial assistance programs and for the other postsecondary programs authorized by the HEA. The institution must submit the form (1) initially when it first seeks to become eligible for the Title IV programs; (2) when its program participation agreement expires (recertification); (3) when it changes ownership, merges, or changes structure, (4) to be reinstated to participate in the Title IV programs, (5) to notify the Department when it makes certain changes, e.g. name or address; and (5) if it wishes to have a new program (outside its current scope) or new location approved for Title IV purposes.

Dated: November 8, 2013.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–27265 Filed 11–13–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0112]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Annual Performance Report and Certification of Financial Need for the Jacob K. Javits Fellowship Program

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before December 16, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0112 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Acting Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Kate Mullan, 202–401–0563 or electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Annual Performance Report and Certification of Financial Need for the Jacob K. Javits Fellowship Program.

OMB Control Number: 1840–0630.

Type of Review: Extension without change of an existing collection of information.

Respondents/Affected Public: Private sector.

Total Estimated Number of Annual Responses: 51.

Total Estimated Number of Annual Burden Hours: 204.

Abstract: The Jacob K. Javits Fellowship Program is authorized by Title VII, Part A, Subpart 1 of the Higher Education Act of 1965, as amended and provides up to four years of financial assistance to students to undertake graduate study at the doctoral and Master of Fine Arts level in selected fields of arts, humanities, and social sciences. Fellows are selected on the basis of (1) superior academic ability demonstrated by their achievements and exceptional promise; and (2) financial need. The amounts of new and continuing awards are based on a student's financial need as determined by the Title IV, Part F needs analysis system. Each individual fellow's need must be assessed and reported each year, along with a continuing fellow's academic progress as determined by the institution. This collection is completed annually by grantee institutions to report on the fellows' progress and levels of financial need for the next academic year. ED uses this data to calculate fellowship amounts and the total grant amount sent to each institution for each fiscal year.

Dated: November 8, 2013.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–27268 Filed 11–13–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0115]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Student Assistance General Provisions—Subpart E—Verification Student Aid Application Information

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before December 16, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0115 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Kate Mullan, 202–401–0563 or electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Student Assistance General Provisions—Subpart K—Verification Student Aid Application Information.

OMB Control Number: 1845–0041.

Type of Review: Extension without change of an existing collection of information.

Respondents/Affected Public: Private sector, State, Local, or Tribal Governments, individuals or households.

Total Estimated Number of Annual Responses: 32,555,838.

Total Estimated Number of Annual Burden Hours: 3,938,676.

Abstract: This request is for an extension of the information collection supporting the policies and reporting requirements contained in Subpart E of Part 668 Verification and Updating of Student Aid Application Information. Sections 668.53, 668.54, 668.55, 668.56, 668.57, 668.59 and 668.61 contain information collection requirements (OMB control number 1845–0041). This subpart governs the verification and updating of the Free Application for Federal Student Aid (FAFSA) used to calculate an applicant Expected Family Contribution (EFC) for purposes of determining an applicants need for student financial assistance under Title IV of Higher Education Act of 1965, as amended (HEA). The collection of this documentation helps ensure that students (and parents in the case of PLUS loans) receive the correct amount of Title IV program assistance by providing accurate information to calculate applicants expected family contribution.

Dated: November 8, 2013.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–27266 Filed 11–13–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0116]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Jacob K. Javits Fellowship Program Final Performance Report

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before December 16, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0116 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Acting Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Kate Mullan, 202–401–0563 or electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Jacob K. Javits Fellowship Program Final Performance Report.

OMB Control Number: 1840–0752.

Type of Review: Extension without change of an existing collection of information.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 20.

Total Estimated Number of Annual Burden Hours: 120.

Abstract: The purpose of the Jacob K. Javits Fellowship Program is to award fellowships to eligible students of superior ability, selected on the basis of demonstrated achievement, financial need, and exceptional promise, to undertake graduate study in selected fields in the arts, humanities, and social sciences leading to a doctoral degree or to a master's degree in those fields in which the master's degree is the terminal highest degree awarded in the selected field of study at accredited institutions of higher education. Awards are made to institutions of higher education, who disburse funds to fellows. This Final Performance Report will be used by these institutions to report information on the fellowships administered during the four-year project period.

Dated: November 8, 2013

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–27269 Filed 11–13–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Unconventional Resources Technology Advisory Committee

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Unconventional Resources Technology Advisory Committee. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, December 4, 2013, 10:00 a.m.–3:00 p.m.

ADDRESSES: U.S. Department of Energy, 1000 Independence Avenue SW., Room 3G–043, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Elena Melchert, U.S. Department of Energy, Office of Oil and Natural Gas, 1000 Independence Ave. SW., Washington, DC 20585. Phone: (202) 586–5600.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* The purpose of the Unconventional Resources Technology Advisory Committee is to provide advice on development and implementation of programs related to onshore unconventional natural gas and other petroleum resources to the Secretary of Energy; and provide comments and recommendations and priorities for the Department of Energy Annual Plan per requirements of the Energy Policy Act of 2005, Title IX, Subtitle J, Section 999D.

Tentative Agenda

December 4, 2013

9:45 a.m. Registration.

10:00 a.m. Welcome & Introductions, Opening Remarks, Discussion of Subcommittee Reports and Findings regarding the *Draft 2014 Annual Plan,* Discussion of Subcommittee Recommendations, Appoint Editing Committee.

1:30 p.m. Public Comments, if any.

3:00 p.m. Adjourn.

Public Participation: The meeting is open to the public. The Designated Federal Officer and the Chairman of the Committee will lead the meeting for the orderly conduct of business. Individuals who would like to attend must RSVP to *UnconventionalResources@hq.doe.gov* no later than 5:00 p.m. on Friday, November 29, 2013. Please provide your name, organization, citizenship and contact information. Space is limited. Everyone attending the meeting will be required to present government issued identification. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Elena Melchert at the telephone number listed above. You must make your request for an oral statement at least three business days prior to the meeting, and reasonable provisions will be made to include all who wish to speak. Public comment will follow the three-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at *http://energy.gov/fe/services/advisory-committees/unconventional-resources-technology-advisory-committee*.

Issued at Washington, DC, on November 7, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–27255 Filed 11–13–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, December 11, 2013; 8:30 a.m.–5:00 p.m. Thursday, December 12, 2013; 8:30 a.m.–5:00 p.m.

ADDRESSES: Red Lion Hanford House, 802 George Washington Way, Richland, WA 99352.

FOR FURTHER INFORMATION CONTACT: Kimberly Ballinger, Federal Coordinator, Department of Energy Richland Operations Office, 825 Jadwin Avenue, P.O. Box 550, A7–75, Richland, WA 99352; Phone: (509) 376–6332; or Email: *kimberly.ballinger@rl.doe.gov*.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Tri-Party Agreement Agencies' Program Updates, including anticipated impacts to agency and Hanford Advisory Board (HAB) 2014 work plans resulting from the federal government shutdown
- HAB Committee Reports
- HAB Diversity Planning
- DOE Presentation on the Hanford Tank Waste Retrieval, Treatment, and Disposition Framework
- DOE Briefing on the Plutonium Finishing Plant and the Remedial Action Work Plan
- Committee Informational In-room Breakout Sessions
- HAB Action Items:
  - Executive Issues Committee recommendations regarding the National Liaison Position
  - Draft advice on the Hanford Tank Waste Retrieval, Treatment, and Disposition Framework
- Board Business

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kimberly Ballinger at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kimberly Ballinger at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Kimberly Ballinger's office at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.hanford.gov/page.cfm/hab*.

Issued at Washington, DC, on November 8, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–27241 Filed 11–13–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2474–004; ER10–2475–004.
Applicants: Sierra Pacific Power Company, Nevada Power Company.
Description: Amendment to July 1, 2013 Updated Market Power Analysis for the Northwest Region of Sierra Pacific Power Company, *et al.*
Filed Date: 10/31/13.
Accession Number: 20131031–5227.
Comments Due: 5 p.m. ET 11/21/13.

Docket Numbers: ER10–2474–005; ER10–2475–005.
Applicants: Sierra Pacific Power Company, Nevada Power Company.
Description: Notice of Change in Status of Sierra Pacific Power Company, *et al.*
Filed Date: 11/4/13.
Accession Number: 20131104–5166.
Comments Due: 5 p.m. ET 11/25/13.

Docket Numbers: ER14–299–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 11–4–2013 SA 2398 G746 Amended Termination to be effective 12/21/2011.
Filed Date: 11/4/13.
Accession Number: 20131104–5123.
Comments Due: 5 p.m. ET 11/25/13.

Docket Numbers: ER14–308–000.
Applicants: New York Independent System Operator, Inc.
Description: NYISO 205 filing tariff revision re: Prohibited Investment to be effective 1/3/2014.
Filed Date: 11/4/13.
Accession Number: 20131104–5109.
Comments Due: 5 p.m. ET 11/25/13.

Docket Numbers: ER14–309–000.
Applicants: New York Independent System Operator, Inc.
Description: Revisions to the ISO Agreement regarding Prohibited Investments to be effective 1/3/2014.
Filed Date: 11/4/13.
Accession Number: 20131104–5120.
Comments Due: 5 p.m. ET 11/25/13.

Docket Numbers: ER14–310–000.
Applicants: Avista Corporation.
Description: Avista Corporation submits Avista Corp OATT Order No. 764 Compliance Filing to be effective 11/12/2013.
Filed Date: 11/4/13.
Accession Number: 20131105–5000.
Comments Due: 5 p.m. ET 11/25/13.

Docket Numbers: ER14–311–000.
Applicants: National Grid USA, Massachusetts Electric Company, The Narragansett Electric Company.
Description: National Grid USA, Massachusetts Electric Company, and The Narragansett Electric Company's Petition for Limited Waiver.
Filed Date: 11/4/13.
Accession Number: 20131104–5152.
Comments Due: 5 p.m. ET 11/25/13.

Docket Numbers: ER14–312–000.
Applicants: The Connecticut Light and Power Company.
Description: The Connecticut Light and Power Company submit Cancellation of CMEEC LCRA with CMEEC to be effective 1/1/2014.
Filed Date: 11/5/13.
Accession Number: 20131105–5031.
Comments Due: 5 p.m. ET 11/26/13.

Docket Numbers: ER14–313–000.
Applicants: Public Service Company of New Hampshire.
Description: Public Service Company of New Hampshire submits Cancellation of LCRA with CMEEC to be effective 1/1/2014.
Filed Date: 11/5/13.
Accession Number: 20131105–5037.
Comments Due: 5 p.m. ET 11/26/13.

Docket Numbers: ER14–314–000.
Applicants: Tampa Electric Company.
Description: Tampa Electric Company submits Emergency Interchange Service

Schedule A&B—2013 Revised (Bundled) to be effective 5/1/2013.

Filed Date: 11/5/13.

Accession Number: 20131105–5039.

Comments Due: 5 p.m. ET 11/26/13.

Docket Numbers: ER14–315–000.

Applicants: Western Massachusetts Electric Company.

Description: Western Massachusetts Electric Company submits Cancellation of LCRA with CMEEC to be effective 1/1/2014.

Filed Date: 11/5/13.

Accession Number: 20131105–5040.

Comments Due: 5 p.m. ET 11/26/13.

Docket Numbers: ER14–316–000

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits Emergency Interchange Service Contract w_Southern Company—2013 Rev (Unbundled) to be effective 5/1/2013.

Filed Date: 11/5/13.

Accession Number: 20131105–5041.

Comments Due: 5 p.m. ET 11/26/13.

Docket Numbers: ER14–317–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits QF Transmission Agreement with Auburndale Pwr Partners—2013 Revised to be effective 5/1/2013.

Filed Date: 11/5/13.

Accession Number: 20131105–5042.

Comments Due: 5 p.m. ET 11/26/13.

Docket Numbers: ER14–318–000.

Applicants: The Connecticut Light and Power Company.

Description: The Connecticut Light and Power Company submits LCRA with CTMEEC to be effective 1/1/2014.

Filed Date: 11/5/13.

Accession Number: 20131105–5043.

Comments Due: 5 p.m. ET 11/26/13.

Docket Numbers: ER14–319–000.

Applicants: Public Service Company of New Hampshire.

Description: Public Service Company of New Hampshire submits Localized Cost Responsibility Agreement with CTMEEC to be effective 1/1/2014.

Filed Date: 11/5/13.

Accession Number: 20131105–5059.

Comments Due: 5 p.m. ET 11/26/13.

Docket Numbers: ER14–320–000.

Applicants: Western Massachusetts Electric Company.

Description: Western Massachusetts Electric Company submits Localized Cost Responsibility Agreement with CTMEEC to be effective 1/1/2014.

Filed Date: 11/5/13.

Accession Number: 20131105–5061.

Comments Due: 5 p.m. ET 11/26/13.

Docket Numbers: ER14–321–000.

Applicants: The Connecticut Light and Power Company.

Description: The Connecticut Light and Power Company submits Localized Cost Responsibility Agreement with Town of Wallingford to be effective 1/1/2014.

Filed Date: 11/5/13.

Accession Number: 20131105–5067.

Comments Due: 5 p.m. ET 11/26/13.

Docket Numbers: ER14–322–000.

Applicants: Public Service Company of New Hampshire.

Description: Public Service Company of New Hampshire submits Localized Cost Responsibility Agreement with Town of Wallingford to be effective 1/1/2014.

Filed Date: 11/5/13.

Accession Number: 20131105–5074.

Comments Due: 5 p.m. ET 11/26/13.

Docket Numbers: ER14–323–000.

Applicants: Deseret Generation & Transmission Co-operative, Inc.

Description: Deseret Generation & Transmission Co-operative, Inc. submits OATT Order No. 764 Compliance Filing to be effective 11/12/2013.

Filed Date: 11/5/13.

Accession Number: 20131105–5078.

Comments Due: 5 p.m. ET 11/26/13.

Docket Numbers: ER14–324–000.

Applicants: Western Massachusetts Electric Company.

Description: Western Massachusetts Electric Company submits Localized cost responsibility agreement between Town of Wallingford and WMECO to be effective 1/1/2014.

Filed Date: 11/5/13.

Accession Number: 20131105–5079.

Comments Due: 5 p.m. ET 11/26/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 5, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–27163 Filed 11–13–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–90–000]

Pacific Gas and Electric Company; Notice of Initiation of Proceeding and Refund Effective Date

On September 24, 2013, the Commission issued an order that initiated a proceeding in Docket No. EL13–90–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2006), to determine the justness and reasonableness of the rate increase proposed by Pacific Gas and Electric Company. *Pacific Gas and Electric Company,* 144 FERC ¶ 61,277 (2013).

The refund effective date in Docket No. EL13–90–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: November 7, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–27164 Filed 11–13–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9902–92–OECA]

Applicability Determination Index (ADI) Database System Recent Posting: Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards of Performance for New Stationary Sources, Etc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: This notice announces applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS); the National Emission Standards for Hazardous Air Pollutants (NESHAP); and/or the Stratospheric Ozone Protection Program.

FOR FURTHER INFORMATION CONTACT: An electronic copy of each complete document posted on the Applicability Determination Index (ADI) database system is available on the Internet through the Office of Enforcement and Compliance Assurance (OECA) Web site at: *http://www.epa.gov/compliance/monitoring/programs/caa/adi.html*. The letters and memoranda on the ADI may be located by control number, date, author, subpart, or subject search. For questions about the ADI or this notice, contact Maria Malave at EPA by phone at: (202) 564–7027, or by email at: *malave.maria@epa.gov*. For technical questions about individual applicability determinations or monitoring decisions, refer to the contact person identified in the individual documents, or in the absence of a contact person, refer to the author of the document.

SUPPLEMENTARY INFORMATION:

Background

The General Provisions of the NSPS in 40 Code of Federal Regulations (CFR) part 60 and the General Provisions of the NESHAP in 40 CFR part 61 provide that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. EPA's written responses to these inquiries are commonly referred to as applicability determinations. See 40 CFR §§ 60.5 and 61.06. Although the NESHAP part 63 regulations [which include Maximum Achievable Control Technology (MACT) standards] and § 111(d) of the Clean Air Act (CAA) contain no specific regulatory provision providing that sources may request applicability determinations, EPA also responds to written inquiries regarding applicability for the part 63 and § 111(d) programs. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping that is different from the promulgated requirements. See 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). EPA's written responses to these inquiries are commonly referred to as alternative monitoring decisions. Furthermore, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping, or reporting requirements contained in the regulation. EPA's written responses to these inquiries are commonly referred to as regulatory interpretations.

EPA currently compiles EPA-issued NSPS and NESHAP applicability determinations, alternative monitoring decisions, and regulatory interpretations, and posts them to the ADI. In addition, the ADI contains EPA-issued responses to requests pursuant to the stratospheric ozone regulations, contained in 40 CFR part 82. The ADI is an electronic index on the Internet with over one thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS, NESHAP, and stratospheric ozone regulations. Users can search for letters and memoranda by date, office of issuance, subpart, citation, control number, or by string word searches.

Today's notice comprises a summary of 32 such documents added to the ADI on October 30, 2013. This notice lists the subject and header of each letter and memorandum, as well as a brief abstract of the letter or memorandum. Complete copies of these documents may be obtained from the ADI through the OECA Web site at: *www.epa.gov/compliance/monitoring/programs/caa/adi.html*.

Summary of Headers and Abstracts

The following table identifies the database control number for each document posted on the ADI database system on October 30, 2013; the applicable category; the section(s) and/or subpart(s) of 40 CFR part 60, 61, or 63 (as applicable) addressed in the document; and the title of the document, which provides a brief description of the subject matter.

We have also included an abstract of each document identified with its control number after the table. These abstracts are provided solely to alert the public to possible items of interest and are not intended as substitutes for the full text of the documents. This notice does not change the status of any document with respect to whether it is ''of nationwide scope or effect'' for purposes of CAA § 307(b)(1). For example, this notice does not convert an applicability determination for a particular source into a nationwide rule. Neither does it purport to make a previously non-binding document binding.

ADI DETERMINATIONS UPLOADED ON OCTOBER 30, 2013

Control No.	Categories	Subparts	Title
1100013	NSPS	A, OOO, UUU	Request to Extend Required Initial Performance Test due to Force Majeure.
1100014	NSPS	A, KKK, Kb	Applicability to Condensate Storage Tanks and a Backup Vapor Recovery Unit.
1100015	MACT, NSPS	J, UUU	Alternative Monitoring Plan for Opacity Monitoring—Fluidized Catalytic Cracking Unit Wet Gas Scrubber.
1100016	NSPS	J	Approval of Operating Parameters on an ExxonMobil Low Energy Jet Ejector Venturi (JEV) Wet Gas Scrubber for a Compliance Alternative.
1100019	MACT, NSPS	J, UUU	Alternative Monitoring Plan for Low Energy Jet Ejector Venturi (JEV) Wet Gas Scrubber.
1100020	NSPS	J	Alternative Monitoring Plan for Low Energy Jet Ejector Venturi (JEV) Wet Gas Scrubber.
1100021	NSPS	Ja	Request for Exemption in lieu of an Alternative Monitoring Plan for Low Sulfur Bearing Fuel Gas Stream.
1100023	NSPS	J	Alternative Monitoring Plan Request for a Wet Gas Scrubber on a Fluid Catalytic Cracking Unit.
1100024	NSPS	J	Alternative Monitoring Plan Request for Hydrogen Sulfide Vent Stream Monitoring.
1100025	NSPS	J	Request Exemption in lieu of an Alternative Monitoring Plan for Low Sulfur Vent Stream Combustion from a Catalytic Hydrodesulfurization Unit.
1100026	NSPS	J	Request Exemption in lieu of an Alternative Monitoring Plan for Low Sulfur Vent Stream from a Catalytic Platinum Reformer Unit.

ADI DETERMINATIONS UPLOADED ON OCTOBER 30, 2013—Continued

Control No.	Categories	Subparts	Title
1200001	NSPS	NNN, RRR	Alternative Monitoring Plan Request for Vent Stream Flow Monitoring for a Distillation Column and Associated Flare.
1200002	NSPS	EEEE	Request for Clarification of Other Solid Waste Incinerators Exclusion For Prescription Drugs Returned through Voluntary Program.
1200003	NSPS	J	Request for Exemption in lieu of an Alternative Monitoring Plan for Monitoring of Multiple Low Sulfur Vent Streams from a Coker Disulfide Separator and Reformer.
1200007	NSPS	Db	Request for Use of Alternate Span Value for NO_X CEMS on a Boiler.
1200008	NSPS	J	Alternative Monitoring Plan Request for Monitoring a Wet Gas Scrubber on a Refinery Fluid Catalytic Cracking Unit.
1200010	NSPS	NNN, RRR	Alternative Monitoring Plan and Test Waiver Request for Vent Stream Flow Monitoring.
1200011	NSPS	J	Request Exemption in lieu of an Alternative Monitoring Plan for Monitoring Three Low Sulfur Vent Streams from Combustion a Catalytic Hydrodesulfurization Unit.
1200012	NSPS	J	Request Exemption in lieu of an Alternative Monitoring Plan for Low Sulfur Vent Stream Combustion from a Cumene Depropanizer Unit.
1200013	NSPS	J	Alternative Monitoring Plan Request for Wet Gas Scrubbers on a Refinery Fluid Catalytic Cracking Unit.
1200014	NSPS	J	Request Exemption in lieu of an Alternative Monitoring Plan for Vent Stream Combustion from a Catalytic Reformer Unit in a Flare.
1200015	NSPS	NNN, RRR	Alternative Monitoring Plan Request for the Use of Car Seals on Closed Bypass Valves.
1200022	NSPS	J	Request for Clarification of Marine Vessel Loading Vapors as Fuel Gas.
1200025	NSPS	J	Request for Use of Alternate Span Value for O2 CEMS.
1200028	NSPS	EEEE, FFFF	Alternative Emission Control Request to use Operating Parameter Limits (OPLs) in Lieu of using a Wet Scrubber.
1200032	MACT, NSPS	JJJJ, ZZZZ	Determination of Applicability for Stationary Spark Ignition Internal Combustion Engines.
A130001	Asbestos	M	Determination of the Use of Foam to Meet the Adequately Wet Requirement.
A130002	Asbestos	M	Removal of Buried Pipe Wrapped with Asbestos-Containing Material.
A130003	Asbestos	M	Encapsulating Wall Board with Spray Foam.
M130001	MACT	CC	Alternative Monitoring Plan Request for use of a Video Camera for Verification of Flare Pilot Light.
M130002	MACT	FFFF, YY	Determination of Applicability of NESHAP to Propane Dehydrogenation Plant.
Z130001	NESHAP	E	Determination of Applicability of NESHAP to an Integrated Biosolids Management System.

Abstracts

Abstract for [1100013]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1100013.pdf.

Q: Will EPA consider as force majeure certain contract disputes between a company and its contractor over production testing and plant operation at a facility that prevented stack tests from being conducted before the compliance deadline under 40 CFR part 60, subparts OOO and UUU, at the Cadre Material Products crusher and calciner facility in Voca, Texas?

A: No. EPA disagreed that the events described in the request letter met the criteria of force majeure under 40 CFR 60.8(a), because the contract dispute was not beyond the company's ability to control. EPA disapproved the request for an eight week extension to conduct required performance testing and submit the necessary reports; however, EPA granted a one-week extension for adverse weather conditions that occurred and did meet force majeure criteria.

Abstract for [1100014]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1100014.pdf.

Q1: Does 40 CFR part 60, subparts A and KKK apply to a backup vapor recovery unit (BU–VRU) compressor at the Marathon Petroleum (Marathon) Indian Basin Gas Plant (IBGP) near Carlsbad, New Mexico?

A1: Yes. EPA determined that the BU–VRU compressor unit is considered to be in VOC service. Even though the compressor is associated with pollution control equipment, the pollution control exemption of 40 CFR 60.14(e) of the General Provisions cannot apply because of a direct conflict with the applicability provisions of NSPS subpart KKK. The provisions of 40 CFR 60.630 supersede any exemptions in 40 CFR 60.14.

Q2: Does 40 CFR part 60, subparts A and Kb apply to two stabilized condensate storage tanks at the Marathon IBGP near Carlsbad, New Mexico?

A2: Yes. EPA determined that the two storage tanks are located after the point of custody transfer since these are located in the natural gas processing plant, which is upstream of the IBGP. Therefore, both tanks are subject to the requirements of NSPS subpart Kb because the custody transfer exemption of 40 CFR § 60.110b(d)(4) does not apply.

Abstract for [1100015]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1100015.pdf.

Q: Does EPA approve ExxonMobil's Alternative Monitoring Plan (AMP) under 40 CFR 60.13(i)(3) and 63.8(4)(i) for monitoring a wet gas scrubber (WGS) on refinery Fluid Catalytic Cracking Unit (FCCU) No. 2, in lieu of a Continuous Opacity Monitoring System (COMS), to demonstrate compliance with the opacity limits under 40 CFR 60.102(a)(2) and parameter monitoring requirements of 40 CFR § 63.1564(b)(1) at ExxonMobil's Baytown, Texas refinery (ExxonMobil)?

A: Yes. EPA granted final approval of ExxonMobil's AMP based on its approval of the two scrubber operating parameter limits (OPLs) established under performance testing at representative operating conditions for the FCCU and each WGS. The establishment of the two OPLs and their approval by EPA were conditions in a prior approval. Previously, EPA had conditionally approved ExxonMobil's AMP request since moisture in the FCCU exhaust from the WGS interfered with the ability of the COMS to take accurate readings, due to excessive water at the point of measurement, and flow meters were not reliable for measuring WGS scrubber liquid recirculation rates. In the response letter, EPA also clarified that ongoing compliance demonstration for each approved OPL is to be based on a three hour rolling average period.

Abstract for [1100016]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1100016.pdf.

Q: Does EPA approve ConocoPhillips' Alternative Monitoring Plan (AMP) under 40 CFR 60.13(i)(3) for monitoring a wet gas scrubber (WGS) on refinery Fluid Catalytic Cracking Unit (FCCU) No. 4, in lieu of a Continuous Opacity Monitoring System (COMS), to demonstrate compliance with the opacity limit under 40 CFR 60.102(a)(2) at ConocoPhillips' Ponca City, Oklahoma refinery?

A: Yes. EPA granted final approval of ConocoPhillips' AMP request established under performance testing at representative operating conditions for the FCCU and each WGS. The establishment of the two OPLs and their approval by EPA were conditions in a prior approval. Previously, EPA had conditionally approved ConocoPhillips' AMP request because moisture in the FCCU exhaust from the WGS interfered with the ability of the COMS to take accurate readings, due to excessive water at the point of measurement. As described in the response letter, EPA also required continued periodic testing to confirm OPLs for ongoing compliance demonstration beyond the termination of the existing Consent Decree.

Abstract for [1100019]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1100019.pdf.

Q: Does EPA approve ConocoPhillips' Alternative Monitoring Plan (AMP) under 40 CFR 60.13(i)(3) for monitoring a wet gas scrubber (WGS) on refinery Fluid Catalytic Cracking Unit (FCCU) No. 5, in lieu of a Continuous Opacity Monitoring System (COMS), to demonstrate compliance with the opacity limit under 40 CFR 60.102(a)(2) at ConocoPhillips' Ponca City, Oklahoma refinery?

A: Yes. EPA granted final approval to ConocoPhillips' AMP request established under performance testing at representative operating conditions for the FCCU and each WGS. The establishment of the OPLs and their approval by EPA were conditions in a prior approval. Previously, EPA had conditionally approved ConocoPhillips' AMP request since moisture in the FCCU exhaust from the WGS interfered with the ability of the COMS to take accurate readings due to excessive water at the point of measurement. As described in the response letter, EPA also required continued periodic testing to confirm OPLs for ongoing compliance demonstration.

Abstract for [1100020]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1100020.pdf.

Q: Will EPA approve Motiva's Alternative Monitoring Plan (AMP) under 40 CFR 60.13(i)(3) for monitoring wet gas scrubbers (WGS) on a refinery Fluid Catalytic Cracking Unit (FCCU), in lieu of a Continuous Opacity Monitoring System (COMS), to demonstrate compliance with the opacity limit under 40 CFR 60.102(a)(2) at Motiva's Convent, Louisiana refinery?

A: Yes. EPA conditionally approves Motiva's AMP since moisture in the FCCU exhaust from the WGS interfered with the ability of the COMS to take accurate readings due to excessive water at the point of measurement. The conditions for approval require that Motiva establish three Operating Parameter Limits (OPLs) under performance testing at representative operating conditions for the FCCU and each WGS, whereby worst-case emissions are anticipated. EPA identified the three OPLs to ensure that the WGSs function as intended and emissions from the FCCU will meet the regulatory requirements for particulate matter, sulfur dioxide and opacity.

Abstract for [1100021]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1100021.pdf.

Q: Does EPA approve an exemption in lieu of a previously submitted Alternative Monitoring Plan (AMP) request for combusting a vent stream from an alkylation unit in a dedicated process flare as an inherently low-sulfur stream under 40 CFR part 60 subpart Ja, at Valero Refining's Ardmore, Oklahoma refinery?

A: Yes. EPA determined that a monitoring exemption is appropriate for the Alkylation Unit vent stream, and voided the AMP request. Based upon review of the information provided, EPA agreed that the dedicated process flare is exempt from the monitoring requirements of 40 CFR 60.105a(g) because the vent stream combusted in the flare is inherently low in sulfur because it is produced in a process unit intolerant to sulfur contamination, and thus, meets the conditions and exemption criteria of sulfur content below 5 parts per million in 40 CFR 60.107a(a)(3)(iii). The effective date of the exemption is the effective date of the reissued final rule and lift of stay, November 13, 2012. EPA also clarified that the exemption determination should be referenced and attached to the facility's new source review and Title V permit for federal enforceability.

Abstract for [1100023]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1100023.pdf.

Q: Does EPA approve Marathon Petroleum's (Marathon) Alternative Monitoring Plan (AMP) under 40 CFR 60.13(i)(3) for monitoring a wet gas scrubber (WGS) on a refinery Fluid Catalytic Cracking Unit (FCCU), in lieu of a Continuous Opacity Monitoring System (COMS), to demonstrate compliance with the opacity limit under 40 CFR 60.102(a)(2) at Marathon's Texas City, Texas refinery?

A: Yes. EPA granted final approval of Marathon's AMP request based on the approval of the three scrubber operating parameter limits (OPLs) established under performance testing at representative operating conditions for the FCCU and each WGS. The establishment of the OPLs and their approval by EPA were conditions in a prior approval. Previously, EPA had conditionally approved Marathon's AMP request since moisture in the FCCU exhaust from the WGS interfered with the ability of the COMS to take accurate readings due to excessive water at the point of measurement. In the response letter, EPA also clarified that compliance demonstration for each OPL was to be based on a three hour rolling average period, and required continued periodic testing to confirm OPLs for ongoing compliance demonstration.

Abstract for [1100024]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1100024.pdf.

Q: Does EPA approve Motiva's Alternative Monitoring Plan (AMP) under 40 CFR 60.13(i)(3) for monitoring a hydrogen sulfide (H_2S) vent stream combusted in a crude charge heater, in lieu of a Continuous Emissions Monitoring System (CEMS), to demonstrate compliance with the sulfur dioxide (H_2S) monitoring requirements of 40 CFR 60.105(a)(3) and (4) under NSPS subpart J, at Motiva's Convent, Louisiana refinery?

A: No. EPA determined that Motiva's AMP request is not acceptable because it has not submitted sufficient information to justify it. EPA requires that at least two critical independent Operating Limit Parameters (OPLs) be proposed for the caustic pre-wash tower to be able to obtain EPA's approval for using a daily ''doctor test'' (ASTM Method D4952–09) to monitor total sulfur and sulfides in the tower outlet effluent, in lieu of installing a H_2S CEMS. Therefore, the requirement to install a CEMS for monitoring H_2S in the vent stream combusted in the Crude Charge Heater under 40 CFR 60.105(a)(4) shall continue to apply.

Abstract for [1100025]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1100025.pdf.

Q: Does EPA approve an exemption in lieu of a previously approved Alternative Monitoring Plan (AMP) for combusting the vent stream from a catalytic Hydrodesulfurization unit (CHD No. 1) at a process heater as an inherently low-sulfur stream under 40 CFR part 60 subpart J, at the ExxonMobil's Beaumont, Texas refinery?

A: Yes. EPA approves the monitoring exemption for the catalytic hydrodesulfurization vent stream, and voided ExxonMobil's AMP request based on the process operating parameters and monitoring data submitted by the company and in light of changes made to Subpart J on June 24, 2008 (73 FR 35866). The vent stream combusted in the heater meets the conditions and exemption criteria of 40 CFR 60.105(b)(1)(i)–(v), and therefore has been demonstrated to be inherently low in sulfur since it meets the conditions and exemption criteria of sulfur content below 5 parts per million in 40 CFR 60.105(a)(4)(iv)(C). EPA agreed that the process heater is exempt from monitoring requirements of 40 CFR 60.105(a)(3) and (4). If refinery operations change from representations made for this exemption determination, then ExxonMobil must document the change(s) and follow the appropriate steps outlined in 40 CFR 60.105(b)(3)(i)–(iii).

Abstract for [1100026]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1100026.pdf.

Q: Does EPA approve an exemption in lieu of an Alternative Monitoring Plan (AMP) for combusting the combined vent stream from a catalytic platinum reformer unit (PtR–4) in two heaters or a low pressure flare as an inherently low-sulfur stream under 40 CFR part 60 subpart J, at the ExxonMobil Beaumont, Texas refinery?

A: Yes. EPA determined that a monitoring exemption is appropriate for the combined vent stream, and voided the AMP request based on the process operating parameters and monitoring data submitted by the company and in light of changes made to Subpart J on June 24, 2008 (73 FR 35866). EPA agreed that the heaters and flare that burn the vent stream are exempt from monitoring requirements of 40 CFR 60.105(a)(3) and (4). The combined vent stream combusted is inherently low in sulfur because it is produced in a process unit intolerant to sulfur contamination, and thus, meets the conditions and exemption criteria of sulfur content below 5 parts per million in 40 CFR 60.105(a)(4)(iv)(C). If refinery operations change such that the sulfur content of the off-gas vent stream changes from representations made for this exemption determination, then ExxonMobil must document the change(s) and follow the appropriate steps outlined in 40 CFR 60.105(b)(3)(i)–(iii).

Abstract for [1200001]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1200001.pdf.

Q: Does EPA approve an Alternative Monitoring Plan (AMP) for vent stream flow monitoring for a distillation column and associated flare to implement NSPS subpart RRR testing, monitoring, and recordkeeping provisions in lieu of complying with corresponding provisions of NSPS subpart NNN, with the exception of small vent and drain valves utilized for maintenance events, for the Advanced Aromatics facility in Baytown, Texas?

A: Yes. EPA approves Advanced Aromatics' AMP request to implement NSPS subpart RRR for testing, monitoring, and recordkeeping provisions in lieu of complying with corresponding provisions of NSPS subpart NNN for a distillation column vent stream routed to a flare without any by-pass lines. To ensure that affected vent streams are routed to appropriate control devices, Advanced Aromatics is required to maintain a schematic diagram of the affected vent streams, collection system(s), fuel systems, control devices, and bypass systems as part of the initial report submitted in accordance with 40 CFR 60.705(b). EPA noted that small vent and drain valves utilized for maintenance events are not exempt under NSPS subpart NNN or subpart RRR. Therefore, flow must be monitored during maintenance events at these locations in accordance with NSPS subpart RRR, because such components act as bypass valves during such events (i.e., flow is diverted away from the control device).

Abstract for [1200002]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1200002.pdf.

Q: The Arkansas Department of Environmental Quality requests guidance from EPA on whether prescription drugs collected by the police department during community voluntary take back programs in Arkansas meet the definition of confiscated contraband under 40 CFR 60.2887(p), in order to claim an exclusion from NSPS subpart EEEE requirements for other solid waste incinerators (OSWI)?

A: No. EPA does not consider prescription drugs collected from households during a community take back program to be illegal or prohibited drugs; therefore, they are not ''contraband.'' As described in the preamble to the OSWI final rule (69 FR 71483), such drugs are clearly not confiscated, since they are voluntarily collected.

Abstract for [1200003]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1200003.pdf.

Q: Does EPA approve exemptions in lieu of Alternative Monitoring Plans (AMP) for combusting multiple vent streams from a coker, disulfide separator, and reformer in various combustion devices as inherently low-sulfur streams under 40 CFR part 60 subpart J, at the Valero Refining Texas City, Texas refinery?

A: Yes. EPA approves a monitoring exemption for the vent streams, and voided the original AMP request based on review of the information provided by the company and in light of changes made to Subpart J on June 24, 2008 (73 FR 35866). EPA agreed that the combustion devices are exempt from monitoring requirements of 40 CFR 60.105(a)(3) and (4). The two vent streams combusted are inherently low in sulfur because they are produced in a process unit intolerant to sulfur contamination, and thus, meet the conditions and exemption criteria of sulfur content of below 5 parts per million in 40 CFR 60.105(a)(4)(iv)(C). If refinery operations cause a change in an exempt stream status, then Valero must document the change and determine if the stream remains exempt.

Abstract for [1200007]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1200007.pdf.

Q: Does EPA approve an alternative monitoring plan (AMP) to use a lower alternate span value for a nitrogen oxide (NO_X) continuous emissions monitoring system (CEMS) than what is required in 40 CFR 60.48b(e)(2) on a boiler required to meet more stringent NO_X emission limit under Best Available Control Technology (BACT) and subject to NSPS subpart Db, at ConocoPhillips' Westlake, Louisiana facility?

A: Yes. EPA approves ConocoPhilip's AMP to lower the Boiler NO_X CEMS span setting from 500 ppm to 100 ppm for the existing facility operations. The use of BACT may lower stack gas concentrations such that the span value of 500 ppm for NO_X CEMS specified by 40 CFR 60.48b(e)(2) may be too high to ensure accurate and reliable reporting of compliance with a more stringent NO_X emission limit. The proposed lower span setting should ensure accuracy in measuring actual NO_X concentrations in the boiler stack gases so that compliance can be demonstrated with adequate confidence levels.

Abstract for [1200008]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1200008.pdf.

Q: Does EPA approve ConocoPhillips' Alternative Monitoring Plan (AMP) under 40 CFR 60.13(i)(3) for monitoring a wet gas scrubber (WGS) on a refinery Fluid Catalytic Cracking Unit (FCCU), in lieu of a Continuous Opacity Monitoring System (COMS), to demonstrate compliance with the opacity limit under 40 CFR 60.102(a)(2) at ConocoPhillips' Sweeny, Texas refinery?

A: Yes. EPA granted final approval of ConocoPhillips' AMP request based on approval of the three scrubber operating parameter limits (OPLs) CHD No. 1 established under performance testing at representative operating conditions. The establishment of the three OPLs and their approval by EPA were conditions in a prior approval. Previously, EPA had conditionally approved the AMP since moisture in the FCCU exhaust from the WGS interfered with the ability of the COMS to take accurate readings, due to excessive water at the point of measurement.

Abstract for [1200010]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1200010.pdf.

Q: Does EPA approve an Alternative Monitoring Plan (AMP) request and a performance test waiver for two ethylene distillation columns vent streams being introduced with the primary fuel into associated boilers and process heaters without any bypass lines, in accordance with 40 CFR 60.8(b), and as provided by 40 CFR 60.704(b)(5), to implement NSPS subpart RRR testing, monitoring, and recordkeeping provisions in lieu of complying with corresponding provisions of NSPS subpart NNN, at the Chevron Phillips facility in Port Arthur, Texas?

A: Yes. EPA approves Chevron Phillips' AMP request to implement the NSPS subpart RRR for testing, monitoring, and recordkeeping provisions, in lieu of complying with corresponding provisions of NSPS subpart NNN. To ensure that affected vent streams are routed to the appropriate control devices, Chevron Phillips facility is required to maintain a schematic diagram of the affected vent streams, collection system(s), fuel systems, and control devices as part of the initial report submitted in accordance with 40 CFR 60.705(b).

Abstract for [1200011]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1200011.pdf.

Q: Does EPA approve an exemption in lieu of an Alternative Monitoring Plan (AMP) for combusting three vent streams from a catalytic hydrodesulfurization unit as inherently low-sulfur streams under 40 CFR part 60 subpart J, at the Citgo Petroleum Corpus Christi, Texas East refinery (Citgo)?

A: Yes. EPA determined that a monitoring exemption is appropriate for the specified Hydrar vent streams, and voided the original AMP request in light of the changes of the revised rule dated June 24, 2008. Based on a review of the information provided, EPA agreed that combustion devices which burn the streams are exempt from the monitoring requirements of 40 CFR 60.105(a)(3) and (4). The vent streams combusted are inherently low in sulfur because they are produced in a process unit intolerant to sulfur contamination, and thus, meet the conditions and exemption criteria of sulfur content below 5 parts per million in 40 CFR 60.105(a)(4)(iv)(C). If refinery operations cause a change in an exempt stream status, then Citgo must document the change and determine if the stream remains exempt. If it is determined that the streams are no longer exempt, continuous monitoring at each combustion device must begin within 15 days of the change, in accordance with 40 CFR 60.105(a)(4)(iv).

Abstract for [1200012]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1200012.pdf.

Q: Does EPA approve an exemption in lieu of an Alternative Monitoring Plan (AMP) for combusting a vent stream from a cumene depropanizer unit as an inherently low-sulfur stream under 40 CFR part 60 subpart J, at the Citgo Petroleum Corpus Christi, Texas East refinery (Citgo)?

A: Yes. EPA determined that a monitoring exemption is appropriate for the vent stream from a cumene depropanizer unit, and voided the original Citgo's AMP in the light of the changes of the revised rule dated June 24, 2008. Based on a review of the information provided, EPA agreed that combustion devices that burn the vent stream are exempt from monitoring requirements of 40 CFR 60.105(a)(3) and (4). The vent stream combusted is inherently low in sulfur because it is produced in a process unit intolerant to sulfur contamination, and thus, meets the exemption criteria of sulfur content below 5 parts per million in 40 CFR 60.105(a)(4)(iv)(C). If refinery operations cause a change in an exempt stream status, then Citgo must document the change and determine if the stream remains exempt. If it is determined that the stream is no longer exempt, continuous monitoring at each combustion device must begin within 15 days of the change, in accordance with 40 CFR 60.105(a)(4)(iv).

Abstract for [1200013]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1200013.pdf.

Q: Does EPA approve an Alternative Monitoring Plan (AMP) under 40 CFR 60.13(i)(3) for monitoring wet gas scrubbers (WGS) on a refinery Fluid Catalytic Cracking Unit (FCCU), in lieu of a Continuous Opacity Monitoring System (COMS), to demonstrate compliance with the opacity limit under 40 CFR 60.102(a)(2) at Citgo Petroleum's (Citgo) Lake Charles, Louisiana refinery?

A: EPA conditionally approves Citgo's AMP request. The AMP approval is conditioned on Citgo conducting another performance test (PT) to properly evaluate under representative operating conditions and establish the three operating parameter limits (OPLs) for each WGS to ensure these scrubbers function as intended, and that the PT results indicate that emissions from the FCCU meet the particulate matter, sulfur dioxide and opacity standards.

Abstract for [1200014]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1200014.pdf.

Q: Does EPA approve an exemption in lieu of an Alternative Monitoring Plan (AMP) for combusting a vent stream from a catalytic reformer unit in a flare as an inherently low-sulfur stream under 40 CFR part 60 subpart J, at the ConocoPhillips Sweeny, Texas refinery?

A: Yes. EPA determined that a monitoring exemption is appropriate for the catalytic reformer unit vent stream, and voided the original AMP in light of the changes made in the revised rule dated June 24, 2008. Based on a review of the information provided, EPA agreed that the flare is exempt from the monitoring requirements of 40 CFR 60.105(a)(3) and (4). The vent stream combusted in the flare is inherently low in sulfur because it is produced in a process unit intolerant to sulfur contamination, and thus, meets the conditions and exemption criteria of sulfur content below 5 parts per million in 40 CFR 60.105(a)(4)(iv)(C). If other sulfur/sulfide bearing streams not from catalytic reformers enter the stripper and become part of the waste fuel gas stream, ConocoPhillips must apply for an AMP on the stripper, and propose at least three independent process parameters to ensure a low sulfur/sulfide stream going to the flare. EPA clarify that any significant increase in the sulfur/sulfide concentration detected in the stream would initiate continuous monitoring under 40 CFR 60.1 05(a)(3) or (4).

Abstract for [1200015]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1200015.pdf.

Q: Does EPA approve a waiver of the requirement under NSPS subpart NNN at 40 CFR 60.663(b)(2), and to implement the alternative monitoring requirements of NSPS subpart RRR at 40 CFR 60.703(b)(2)(ii) instead, at the ConocoPhillips East Vacuum Liquid Recovery/CO2 Plant in Lea County, New Mexico?

A: Yes. EPA approves ConocoPhillips' AMP request for a waiver of the monitoring requirements under 40 CFR 60.663(b)(2) to implement the monitoring requirements of 40 CFR 60.703(b)(2)(ii) instead, which will allow for the use of car seals on closed bypass valves in lieu of flow indicators. To ensure that affected vent streams are routed to appropriate control devices, ConocoPhillips is required to maintain a schematic diagram of the affected vent streams, collection system(s), fuel systems, control devices, and bypass systems as part of the initial report submitted in accordance with 40 CFR 60.705(b).

Abstract for [1200022]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1200022.pdf.

Q: Are marine vessel loading vapors that are inherently low in sulfur, collected by a Marine Vapor Recovery (MVR) system and routed to an air-assisted marine flare vapor combustor, at the ExxonMobil Beaumont, Texas refinery, subject to MACT subpart Y requirements under 40 CFR 63.562, also subject to New Source Performance Standards (NSPS) for Refineries, part 60, subpart J?

A: No. EPA determines that if the vent stream is collected to comply with the provisions for marine tank vessel loading under 40 CFR 63.562 or 40 CFR 63.651, it does not meet the definition of a fuel gas, as defined at 40 CFR 60.101(d). EPA evaluated ExxonMobil's request in light of changes made to NSPS subpart J on June 24, 2008, which modified the definition of fuel gas to specifically exclude vapors collected and combusted to comply with provisions of 40 CFR 63.562 or 40 CFR 63.651.

Abstract for [1200025]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1200025.pdf.

Q: Does EPA approve an alternative monitoring plan (AMP) for an alternate lower span setting of 10 percent for the oxygen (O2) continuous emissions monitoring system (CEMS) on sulfur recovery units (SRU) subject to NSPS subpart J at the Flint Hills Resources (FHR) East and West Refineries in Corpus Christi, Texas?

A: Yes. EPA approves the AMP request for the proposed lower span setting of 10 percent for the specified CEMS since it satisfied criteria established in Performance Specification 2 of subpart 60, Appendix B. Based on the information provided in your AMP request, the lower span setting on specified CEMS should ensure accuracy in measuring actual pollutant concentrations in stack gases so that compliance can be demonstrated with adequate confidence levels.

Abstract for [1200028]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1200028.pdf.

Q: Does EPA approve a petition to use Operating Parameter Limits (OPLs) to limit emissions in lieu of using a wet scrubber for a dual chamber commercial other solid waste incinerator (OSWI) unit, which destroys contraband for U.S. Customs and other law enforcement agencies, under NSPS subpart FFFF, located at Kippur Corporation's (Kippur) El Paso, Texas facility?

A: No. EPA denies Kippur's petition due to a lack of information pertaining to the recent modification made to increase the design capacity of the OWSI unit, as well as a lack of information pertaining to both the proper characterization of material fired to the OSWI Unit and the proper operation, performance testing established under representative operating conditions, and subsequent monitoring of the OSWI unit proposed OPLs to demonstrate compliance with the rule. As described in the EPA response letter, this information is needed to be able to evaluate the petition under the appropriate rule that applies to the modified OSWI unit. If a modification occurred, then according to 40 CFR 60.2992, the OSWI unit becomes subject to 40 CFR part 60 subpart EEEE and 40 CFR part 60 subpart FFFF no longer applies.

Abstract for [1200032]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\1200032.pdf.

Q1: The Oklahoma Department of Environmental Quality (ODEQ) requests guidance from EPA on whether engines with: (1) A maximum engine power equal to or greater than 75 KW (100 HP), except gasoline and rich burn engines that use liquid petroleum gas, which were manufactured between 06/12/2006 and 07/01/2007, and for which the owner or operator commenced construction after 06/12/2006; and (2) lean-burning maximum engine power equal to or greater than 500 HP but less than 1,350 HP, manufactured between 06/12/2006 and 01/01/2008, and for which the owner or operator commenced construction after 06/12/2006; are subject to requirements of 40 CFR part 63 subpart ZZZZ for reciprocating internal combustion engines (RICE MACT) and 40 CFR part 60 subpart JJJJ for stationary spark ignition internal combustion engines (SSIICE)?

A1: No. EPA concurs with ODEQ that the specified engines do not meet the criteria of 40 CFR 60.4230(a), and consequently have no applicable requirements under the SSIICE NSPS or the RICE MACT rules.

Q2: What are the streamlined compliance requirements for various categories of engines in relation to the SSIICE NSPS or the RICE MACT?

A2: EPA notes that if an engine specifically identified in 40 CFR 63.6590(c) is not subject to any requirements in the NSPS SSIICE, then no further action is necessary for the specified engine under the RICE MACT. However, all other engines must meet additional requirements if so delineated in the RICE MACT.

Q3: What are the key factors in determining whether an owner/operator has any additional requirements to meet under the RICE MACT when the engine is not subject to NSPS SSIICE?

A3: The key factors in determining if there are additional requirements to meet under the RICE MACT, when the engine is not subject to the SSIICE NSPS, are engine size and whether or not the engine is located at a major source or area source.

Abstract for [A130001]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\A130001.pdf.

Q: The Asbestos Institute request clarification from EPA on whether the use of foam meet the ''adequately wet'' standard, as stated in the Asbestos NESHAP, 40 CFR part 61, subpart M?

A: EPA determines that as long as the foam is applied as a liquid and sufficiently mixes with or penetrates the asbestos-containing material and prevents visible emissions, the use of such foam is acceptable in meeting the adequately wet requirement under the Asbestos NEHSAP M. The response is limited to this question regarding foam as a wetting agent. It is the responsibility of the owner or operator to meet other asbestos emission control requirements (also known as ''work practice standards'') during the demolition or renovation operation, as described in the EPA response letter.

Abstract for [A130002]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\A130002.pdf.

Q1: Cantey Hanger LLP request a determination for a client on whether only removing a 1500 foot section of the asbestos-containing material (ACM)-wrapped pipeline in a pipeline renovation project, while leaving the remainder of the non-friable ACM-wrapped pipeline in the ground, transform the site into a waste disposal site under 40 CFR 61.154 of 40 CFR part 61, subpart M (i.e., Asbestos NESHAP)?

A1: No. The Asbestos NESHAP does not apply to undisturbed pipelines coated with ACM that remain in the ground following a renovation project, which is the described scenario in your request, as long as no asbestos-containing waste material is deposited in the recently renovated area. This is consistent with a previously EPA issued applicability determination, ADI Control Number A030001 dated March 6, 2003.

Q2: If no additional ACM is deposited at the site for a year, would the site become an inactive waste disposal site per 40 CFR 61.154(g)?

A2: Yes. If the renovated area does not receive asbestos-containing waste material, the site is not subject to the active waste disposal regulation at 40 CFR 61.154, in general and 40 CFR 61.154(g), specifically. Therefore, the inactive waste disposal requirement at 40 CFR 61.151 of the Asbestos NESHAP does not apply.

Abstract for [A130003]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\A130003.pdf.

Q: Does 40 CFR part 61, subpart M (i.e., Asbestos NESHAP) apply to encapsulating wall board with spray foam insulation if the surface of the wall board will not be disturbed?

A: EPA is unable to comment on whether encapsulating wall board with spray foam insulation would be compliant with the Asbestos NESHAP based on the limited on site-specific information provided in the request. However, if the work you are contemplating does not involve wrecking or taking out load-bearing structures (demolition) or altering one or more facility components, including stripping or removing regulated asbestos-containing material (renovation), then the Asbestos NESHAP for demolition and renovation operations does not apply to the proposed action.

Abstract for [M130001]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\M130001.pdf.

Q: Does EPA approve Valero Refinery's (Valero) Alternative Monitoring Plan (AMP) for using a video camera to monitor a flare pilot flame in a control room and record the observation, in lieu of having an ultraviolet (UV) flame detector, as required by 40 CFR part 63 subpart CC, at Valero's Three Rivers refinery in Texas?

A: No. EPA does not approve Valero's AMP since it determined that the equivalence of using a video camera that must be monitored by operations personnel in lieu of a continuous recording thermocouple or equivalent device was not demonstrated under 40 CFR 60.18(1)(2). 40 CFR 63.644(a)(2) requires that a device that continuously detects the presence of a pilot flame must be used when the controlling device is a flare. 40 CFR 63.11(b)(5) requires that the monitoring device must be a thermocouple or equivalent device. A thermocouple has a continuous recording mechanism that is not dependent on operation or monitoring by personnel.

Abstract for [M130002]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\M130002.pdf.

Q: Is the propane dehydrogenation (PDH) plant located at the Dow Chemical Company, Texas Operations (Dow) site subject to 40 CFR part 63 subpart YY (MON NESHAP) or subpart FFFF (GMACT and Ethylene MACT)?

A: EPA determines that Dow's process is subject to the MON NESHAP, as it did not meet the criteria of an ethylene production process as defined by the Ethylene MACT due to the natural gas liquid feed stream and process conditions including temperature.

Abstract for [Z130001]: C:\Documents and Settings\mmalave\Local Settings\Temp\wzc696\Z130001.pdf.

Q: Is the integrated biosolids management system (IBMS), which uses dried biosolids as a feedstock in the gasifier to produce syngas for heat energy to be transferred to the indirect sludge dryer, located at the MaxWest South Sanford Water Resources Center (MaxWest) in Sanford, Florida, subject to 40 CFR part 61 subpart E?

A: EPA determines that Subpart E is applicable to sludge gasifier and integrated thermal oxidizer portions and not to the sludge dryer portion of MaxWest's IBMS system. 40 CFR part 61 subpart E does not apply to MaxWest's IBMS sludge dryer portion because it does not meet the definition of ''sludge'' dryer in 40 CFR part 61 subpart E since it being indirectly heated by thermal transfer fluid with no contact with combustion gases. 40 CFR part 61 subpart E applies to MaxWest's combination of the gasifier and thermal oxidizer as together they comprise a sewage sludge incinerator of a two-steps process, one that produces the gases through the heating of sewage sludge, and a follow up unit in which the gases are combusted and emissions vented to the atmosphere.

Dated: October 24, 2013.

Lisa Lund,

Director, Office of Compliance.

[FR Doc. 2013–27287 Filed 11–13–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0490; FRL–9902–61]

FIFRA Scientific Advisory Panel; Notice of Rescheduled Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Agency is issuing this notice to reschedule the 3-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review, Scientific Uncertainties Associated with Corn Rootworm Resistance Monitoring for Bt Corn Plant Incorporated Protectants (PIPs). The meeting was announced in the **Federal Register** on August 9, 2013. The Agency issued a notice of cancellation in the **Federal Register** on October 28, 2013.

The new meeting dates are December 4–6, 2013.

DATES: The meeting will be held on December 4–6, 2013, from 9:00 a.m. to approximately 5:00 p.m.

Comments. The Agency encourages that written comments and requests for oral comments are submitted by November 26, 2013. However, written comments and requests to make oral comments may be submitted until the date of the meeting, but anyone submitting written comments after November 26, 2013 should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. For additional instructions, see the **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Fred Jenkins, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–3327; fax number: (202) 564–8382; email address: *Jenkins.fred@epa.gov*.

SUPPLEMENTARY INFORMATION: A cancellation notice was published in the **Federal Register** on October 28, 2013 (78 FR 64211) (FRL–9902–06). All other information provided in the **Federal Register** on August 9, 2013 (78 FR 48672) (FRL–9394–3) remains unchanged.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 6, 2013.

Steven M. Knott,

Deputy Director, Office of Science Coordination and Policy.

[FR Doc. 2013–27263 Filed 11–13–13; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: 2013–3004]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

Form Title: EIB 92–29 Export-Import Bank Report of Premiums Payable for Exporters Only.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This collection of information is necessary, pursuant to 12 U.S.C. 635(a) (1), to determine eligibility of export sales for insurance coverage.

The information collection tool can be reviewed at: *http://www.exim.gov/pub/pending/eib92-29.pdf.*

DATES: Comments must be received on or before December 16, 2013 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB–2013–0044) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20038 Attn: OMB 3048–EIB92–29.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 92–29 Export-Import Bank Report of Premiums Payable for Exporters Only.

OMB Number: 3048–0017.

Type of Review: Regular.

Need and Use: The ''Report of Premiums Payable for Exporters Only'' form is used by exporters to report and pay premiums on insured shipments to various foreign buyers under the terms of the policy and to certify that premiums have been correctly computed and remitted. Individual transactions that an exporter may have with the same foreign borrower can be sub-totaled and entered as a single line item for the specific month provided the length of payment term is identical. The use of sub-totals reduces the administrative burden on the exporter. The 'Report of Premiums Payable for Exporters Only' is used by the Bank to determine the eligibility of the shipment(s) and to calculate the premium due to Ex-Im Bank for its support of the shipment(s) under its insurance program.

Affected Public

This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 2,600.

Estimated Time per Respondent: 15 minutes.

Annual Burden Hours: 7,800.

Frequency of Reporting of Use: Monthly.

Government Expenses

Reviewing Time per Year: 7,800 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $331,500 (time*wages).

Benefits and Overhead: 20%.

Total Government Cost: $397,800.

Kalesha Malloy,

Agency Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2013–27191 Filed 11–13–13; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice 2013–3003]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

Form Title: EIB 92–30 Report of Premiums Payable for Financial Institutions Only.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This collection of information is necessary, pursuant to 12 U.S.C. 635(a)(1), to determine eligibility of the export sales for insurance coverage. The Report of Premiums Payable for Financial Institutions Only is used to determine the eligibility of the shipment(s) and to calculate the premium due to Ex-Im Bank for its support of the shipment(s) under its insurance program. Export-Import Bank customers will be able to submit this form on paper or electronically.

The Export-Import Bank has made a change to the report to have the insured financial institution provide the industry code (NAICS) associated with each specific export. The insured financial institution already provides a short description of the goods and/or services being exported. This additional piece of information will allow Ex-Im Bank to better track what exports it is covering with its insurance policy.

The information collection tool can be reviewed at: *http://www.exim.gov/pub/pending/eib92-30-new.pdf*

DATES: Comments must be received on or before December 16, 2013 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB–2013–0043) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20038, Attn: OMB 3048–EIB92–30.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 92–30 Report of Premiums Payable for Financial Institutions Only.

OMB Number: 3048–0021.

Type of Review: Regular.

Need and Use: This collection of information is necessary, pursuant to 12 U.S.C. Sec. 635(a)(1), to determine eligibility of the applicant for Ex-Im Bank assistance. The information collected enables Ex-Im Bank to determine the eligibility of the shipment(s) for insurance and to calculate the premium due to Ex-Im Bank for its support of the shipment(s) under its insurance program.

Affected Public

This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 215.

Estimated Time per Respondent: 20 minutes.

Annual Burden Hours: 860 hours.

Frequency of Reporting of Use: Monthly.

Government Expenses

Reviewing Time per Year: 860 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $36,550. (time*wages)

Benefits and Overhead: 20%.

Total Government Cost: $43,860.

Kalesha Malloy,

Agency Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2013–27192 Filed 11–13–13; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communication Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before December 16, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* <*mailto:PRA@fcc.gov*> and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0779.

Title: Sections 90.20(a)(1)(iii), 90.769, 90.767, 90.763(b)(l)(i)(a), 90.763(b)(l)(i)(B), 90.771(b) and 90.743, Rules for Use of the 220 MHz Band by the Private Land Mobile Radio Service.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 140 respondents; 670 responses.

Estimated Time per Response: 2 hours to 20 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. sections 154(i), 303(g), 303(r) and 332(a).

Total Annual Burden: 5,886 hours.

Total Annual Cost: $135,000.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is a need for confidentiality with this collection of information.

Needs and Uses: The Commission will submit this expiring collection to the Office of Management and Budget (OMB) for approval. The Commission is requesting approval for an extension of information collection 3060–0779.

The collection includes rules to govern the future operation and licensing of the 220–222 MHz and (220 MHz service). In establishing this licensing plan, FCC's goal is to establish a flexible regulatory framework that allows for efficient licensing of the 220 MHz service, eliminates unnecessary regulatory burdens, and enhances the competitive potential of the 220 MHz service in the mobile service marketplace. However, as with any licensing and operational plan for a radio service, a certain number of regulatory and information burdens are necessary to verify licensee compliance with FCC rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–27220 Filed 11–13–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Thursday, November 14, 2013

Date: November 7, 2013.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, November 14, 2013. The meeting is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street SW., Washington, DC.

Item No.	Bureau	Subject
1	MEDIA	TITLE: Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment of Broadcast Licenses (MB Docket No. 13–50). SUMMARY: The Commission will consider a Declaratory Ruling to clarify the agency's policies and procedures in reviewing broadcast applications for transfer of control, or requests for declaratory ruling that seek greater than 25 percent indirect foreign ownership in broadcast licensees, pursuant to section 310(b)(4) of the Communications Act of 1934.
2	WIRELINE COMPETITION, WIRELESS TELECOMMUNICATIONS, AND OFFICE OF NATIVE AFFAIRS AND POLICY.	TITLE: Status of Universal Service Reform Implementation. SUMMARY: The Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Native Affairs and Policy will present an update on universal service reform implementation.
3	OFFICE OF ENGINEERING & TECHNOLOGY AND OFFICE OF STRATEGIC PLANNING AND POLICY ANALYSIS.	TITLE: Expanding Measuring Broadband America to Mobile. SUMMARY: The Commission will hear a presentation on a new FCC Speed Test App for Android smartphones. This crowdsourcing app will expand the Measuring Broadband America program from fixed to mobile broadband services in order to empower consumers, industry, and policymakers with open, transparent, and accurate information about mobile broadband services across the United States.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live Web page at *www.fcc.gov/live.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by email at *FCC@BCPIWEB.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–27369 Filed 11–12–13; 11:15 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: November 4, 2013.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10490	Bank of Jackson County	Graceville	FL	10/30/2013

[FR Doc. 2013–27165 Filed 11–13–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

[Notice 2013–15]

Filing Dates for the Florida Special Elections in the 13th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Florida has scheduled special elections on January 14, 2014, and March 11, 2014, to fill the U.S. House of Representative seat of the late Representative Bill Young.

Committees required to file reports in connection with the Special Primary Election on January 14, 2014, shall file a 12-day Pre-Primary Report. Committees required to file reports in connection with both the Special Primary and the Special General Election on March 11, 2014, shall file a 12-day Pre-Primary Report, 12-day Pre-General Report and a Post-General Report.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 999 E Street NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Florida Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on January 2, 2014; a 12-day Pre-General Report on February 27, 2014; and a Post-General Report on April 10, 2014. (See charts below for the closing date for each report.)

All principal campaign committees of candidates participating *only* in the Special Primary Election shall file a 12-day Pre-Primary Report on January 2, 2014. (See charts below for the closing date for each report.)

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a semi-annual basis in 2013 or a quarterly basis in 2014 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Florida Special Primary or Special General Elections by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Committees filing monthly that make contributions or expenditures in connection with the Florida Special Primary or General Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the Florida Special Elections may be found on the FEC Web site at *http://www.fec.gov/info/report_dates.shtml.*

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of the lobbyist bundling disclosure threshold during the special election reporting periods (see charts below for closing date of each period). 11 CFR 104.22(a)(5)(v) and (b).

The lobbyist bundling disclosure threshold for calendar year 2013 is $17,100. This threshold amount may change in 2014 based upon the annual cost of living adjustment (COLA). As soon as the adjusted threshold amount is available, the Commission will publish it in the **Federal Register** and post it on its Web site. 11 CFR 104.22(g) and 110.17(e)(2). For more information on these requirements, see **Federal Register** Notice 2009–03, 74 FR 7285 (February 17, 2009).

CALENDAR OF REPORTING DATES FOR FLORIDA SPECIAL ELECTION

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
Committees Involved in only the Special Primary (01/14/14) Must File			
Pre-Primary	12/25/13	12/30/13	01/02/14
Year-End	12/31/13	01/31/14	01/31/14
Committees Involved in Both the Special Primary (01/14/14) and Special General (03/11/14) Must File			
Pre-Primary	12/25/13	12/30/13	01/02/14
Year-End	12/31/13	01/31/14	01/31/14
Pre-General	02/19/14	02/24/14	02/27/14
Post-General	03/31/14	04/10/14	04/10/14
April Quarterly	—WAIVED—		
July Quarterly	06/30/14	07/15/14	07/15/14
Committees Involved in Only the Special General (03/11/14) Must File			
Pre-General	02/19/14	02/24/14	02/27/14

CALENDAR OF REPORTING DATES FOR FLORIDA SPECIAL ELECTION—Continued

Report	Close of books [1]	Reg./cert. & over-night mailing deadline	Filing deadline
Post-General	03/31/14	04/10/14	04/10/14
April Quarterly	—WAIVED—		
July Quarterly	06/30/14	07/15/14	07/15/14

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

On behalf of the Commission,

Dated: November 6, 2013.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 2013–27187 Filed 11–13–13; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: *Tuesday, November 19, 2013 at 10:00 a.m.*

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Matters concerning participation in civil actions or proceedings or arbitration.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2013–27414 Filed 11–12–13; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 010071–040.

Title: Cruise Lines International Association Agreement.

Parties: AMA Waterways; American Cruise Lines, Inc.; Avalon Waterways; Azamara Cruises; Carnival Cruise Lines; Celebrity Cruises, Inc.; Costa Cruise Lines; Crystal Cruises; Cunard Line; Disney Cruise Line; Holland America Line; Hurtigruten, Inc.; Louis Cruises ; MSC Cruises; NCL Corporation; Oceania Cruises; Paul Gauguin Cruises; Pearl Seas Cruises; Princess Cruises; Regent Seven Seas Cruises; Royal Caribbean International; Seabourn Cruise Line; SeaDream Yacht Club; Silversea Cruises, Ltd.; Uniworld River Cruises, Inc.; and Windstar Cruises.

Filing Party: Andre Picciurro, Esq. Kaye, Rose & Partners, LLP; Emerald Plaza, 402 West Broadway, Suite 1300; San Diego, CA 92101–3542.

Synopsis: The amendment would update the agreement membership and make changes to the by-laws.

Agreement No.: 011707–011.

Title: Gulf/South America Discussion Agreement.

Parties: Industrial Maritime Carriers LLC; Seaboard Marine, Ltd.

Filing Party: Wade S. Hooker, Esq.; 211 Central Park W; New York, NY 10024.

Synopsis: The amendment would add BBC Chartering & Logistic GmbH & Co. KG as a party to the agreement. The parties have requested expedited review.

Agreement No.: 012231.

Title: Seaboard/Hybur Ltd. Space Charter Agreement.

Parties: Seaboard Marine Ltd. and Hybur Ltd.

Filing Party: Joshua Stein, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The agreement would authorize the parties to charter space to and from one another in the trades between ports in south Florida on the one hand and ports on the Caribbean/Atlantic Coasts of Mexico, Cayman Islands, and Belize on the other hand.

Agreement No.: 012232.

Title: MSC/CMA CGM North West European Continent-US East Coast Service Space Charter Agreement.

Parties: MSC Mediterranean Shipping Company S.A. and CMA CGM S.A.

Filing Parties: Marc J. Fink, Esq.; Cozen O'Connor; 1627 I Street, NW., Suite 1100; Washington, DC 20006.

Synopsis: The agreement authorizes MSC to charter space to CMA CGM in the trade between the North West European Continent and the U.S. East Coast.

Dated: November 8, 2013.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2013–27253 Filed 11–13–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

Amarine Shipping, Inc. (NVO), 425 W. Apra Street, Compton, CA 90220, Officer: Myung Shin Chang, CEO (QI), Application Type: New NVO License.

Bar Global Logistics, Inc. (NVO), 1670 Alvardo Street, Suite 1, San Leandro, CA 94577, Officers: Lilibeth O. Arroyo, President (QI), Rafael H. Arroyo, Vice President, Application Type: New NVO License.

Beagle Shipping Inc. (NVO & OFF), 2801 NW 7th Avenue, Suite 107, Miami, FL 33122, Officers: Ricardo Tovar, President (QI), Miguel Tovar, Vice President, Application Type: QI Change.

BJJ Enterprise LLC (OFF), 121 North Meridian Street, Suite 553, Jasonville, IN 47438, Officer: Daouda A. Lawani, Member (QI), Application Type: New OFF License.

CNX America Corp. dba Hercules Int'l Transportation (NVO & OFF), 375 W. Victoria Street, Compton, CA 90220, Officer: Wade L. Chuang, President (QI), Application Type: New NVO & OFF License.

Fast Track Worldwide Logistics Inc. (NVO & OFF), 10505 NW 112th Avenue, Suite 18, Miami, FL 33178, Officers: Sonia C. Aquado, Manager (QI), Miguel Otaola, President, Application Type: QI Change.

Ford Global Enterprises Ltd. Liability Co. dba The Vision Logistics Group (NVO & OFF), 2401 Waterman Blvd., Suite A4–319, Fairfield, CA 94534, Officers: Matthew S. Ford, President (QI), Barbara A. Walthall-Ford, Secretary, Application Type: New NVO & OFF License.

Hitachi Transport System (America), Ltd. (NVO & OFF), 21061 S. Western Avenue, Suite 300, Torrance, CA 90501–1122, Officers: Mary M. Crockett, Assistant to the President (QI), Masataka Kashiwa, President, Application Type: QI Change.

JTL Logistics USA, Inc. (NVO), 6788 Morehouse Street, Chino, CA 91710, Officer: Jingyan (Joy) Tang, President (QI), Application Type: New NVO License.

King City Forwarding USA, Inc. (NVO & OFF), 216 Fort Hill Avenue, Pittsfield, MA 01201, Officers: Michael Hilburn, President (QI), Lloyd Lovett, CEO, Application Type: New NVO & OFF License.

KWIC Shipping LLC (NVO), 1854 Pampas Circle, Bolingbrook, IL 60490, Officers: Kimberly A. Whisler Wagner, Member Manager (QI), Kara M. Norkus, Member Manager, Application Type: New NVO License.

LV Shipping (USA) Inc. (NVO & OFF), 19051 Kenswick Drive, Suite 190, Humble, TX 77338, Officers: Keri Gullory, Chief Officer of Operations (QI), Paul Wilson, President, Application Type: QI Change.

Miami Shipping Cargo Inc. (NVO), 2039 NW 23rd Avenue, Miami, FL 33142, Officers: Rafael Rosario, President (QI), Esperanza Rosario, Secretary, Application Type: New NVO License.

Nhi Luu dba Galleon Technologies (NVO), 14852 Bridal Trail Circle, Eastvale, CA 92880, Officer: Nhi Luu, Sole Proprietor (QI), Application Type: New NVO License.

Norgistics North America, Inc. (NVO & OFF), 99 Wood Avenue South, 9th Floor, Iselin, NJ 08830, Officers: Richard Kenyon, President (QI), Fernando Valenzuela, Global President, Application Type: QI Change.

OM Global Shipping Lines Inc (NVO), 33300 Mission Blvd., Suite 35, Union City, CA 94587, Officer: Dharmendra Kanjani, President (QI), Application Type: New NVO License.

Piton Logistics, Inc (NVO), 1837 South State Road 7, Fort Lauderdale, FL 33317, Officers: Marlene Sookram-Sirju, President (QI), Narine Ramcharitar, Treasurer, Application Type: New NVO License.

SDC International Inc (NVO), 14558 Ryamer Street, Van Nuys, CA 91405, Officer: Kfir Cohen, President (QI), Application Type: QI Change.

Silver Brilliant Logistic Inc. (NVO), 15456 Valley Boulevard, City of Industry, CA 91746, Officers: Billy K. Chan, Secretary (QI), Linh P. Vien, CEO (QI), Application Type: Name Change to Silver Brilliant Logistics, Inc. & QI Change.

Unit International, Inc. (OFF), 644 Cesery Blvd., Suite 200, Jacksonville, FL 32211, Officers: Sydney R. Purvis, Jr., President (QI), Warren P. Powers, Chairman, Application Type: QI Change.

Dated: November 8, 2013.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2013–27254 Filed 11–13–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 29, 2013.

A. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *The Ricco Lagomarsino Testamentary Trust, Daly City, California, and a group consisting of Lisa Angelot, Enrico P. Togneri, Warren Hutchins, T. Anne Lassahn, (Trustees of the Trust), and Dolores Togneri, Lora Angelot, and Eric Angelot,* all of Daly City, California, to retain in excess of 10 percent of FNB Bancorp and thereby indirectly control First National Bank of Northern California, both of South San Francisco, California.

Board of Governors of the Federal Reserve System, November 8, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–27245 Filed 11–13–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 8, 2013.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *SP Bancorp, Inc.,* to become a bank holding company by acquiring 100 percent of the voting shares Share Plus Bank, both of Plano, Texas, (the resulting institution from the conversion of Share Plus Federal Bank, a federal savings association, to a commercial bank charter).

Board of Governors of the Federal Reserve System, November 8, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–27246 Filed 11–13–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC seeks public comments on its proposal to extend through February 28, 2017, the current PRA clearance for information collection requirements contained in its Rule Governing Pre-Sale Availability of Written Warranty Terms. That clearance expires on February 28, 2014.

DATES: Comments must be received on or before January 13, 2014.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the collection of information and supporting documentation should be addressed to Svetlana Gans, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H–286, 600 Pennsylvania Ave. NW., Washington, DC 20580, (202) 326–3708.

SUPPLEMENTARY INFORMATION:

Proposed Information Collection Activities

Under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520, federal agencies must get OMB approval for each collection of information they conduct, sponsor, or require. ''Collection of information'' means agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the information collection requirements associated with the Commission's Rule Governing Pre-Sale Availability of Written Warranty Terms, (the Pre-Sale Availability Rule), 16 CFR 702 (OMB Control Number 3084–0112).

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond. All comments must be received on or before January 13, 2014.

The Pre-Sale Availability Rule is one of three rules [1] that the FTC issued as required by the Magnuson Moss Warranty Act, 15 U.S.C. 2301 et seq. (Warranty Act or Act).[2] The Pre-Sale Availability Rule requires sellers and warrantors to make the text of any written warranty on a consumer product costing more than $15 available to the consumer before sale. Among other things, the Rule requires sellers to make the text of the warranty readily available either by (1) displaying it in close proximity to the product or (2) furnishing it on request and posting signs in prominent locations advising consumers that the warranty is available. The Rule requires warrantors to provide materials to enable sellers to comply with the Rule's requirements and also sets out the methods by which warranty information can be made available before the sale if the product is sold through catalogs, mail order, or door to door sales.

Pre-Sale Availability Rule Burden Statement:

Total annual hours burden: 2,446,610.

In its 2010 submission to OMB, FTC staff estimated that the information collection burden of making the disclosures required by the Pre-Sale Availability Rule was approximately 2,490,000 hours per year. Although there has been no change in the Rule's information collection requirements since 2010, staff has adjusted its previous estimate of the number of manufacturers subject to the Rule based on recent Census data. From that, staff now estimates that there are approximately 581 large manufacturers and 13,935 small manufacturers subject to the Rule. In addition, recent Census data suggests that there are an estimated 6,892 large retailers and 452,553 small retailers impacted by the Rule.

In its 2010 submission to OMB, staff took note that some online retailers had begun to make warranty information directly available on their Web sites, thereby reducing their paperwork burden under the Rule. As e-commerce continues to grow, it is likely that even more retailers are posting warranty information online than they were in 2010. Nevertheless, because the staff assumes that only a small percentage of retailers would be significantly less burdened by posting warranty information online—namely, retailers with a large Internet presence or whose inventory is mainly composed of warranted products [3]—the staff has retained its previous estimates of the hour burden for retailers. Therefore, staff continues to estimate that large retailers spend an average of 20.8 hours per year and small retailers spend an average 4.8 hours per year to comply with the Rule. Accordingly, the total annual burden for retailers is approximately 2,315,608 hours ((6,892 large retailers × 20.8 burden hours) + (452,553 small retailers × 4.8 burden hours)). Staff also estimates that more manufacturers are beginning to provide retailers with warranty information in electronic form in fulfilling their obligations under the Rule. Therefore, staff has adjusted the hour burden for manufacturers as it did in its previous

[1] The other two rules relate to the information that must appear in a written warranty on a consumer product costing more than $15 if a warranty is offered and minimum standards for informal dispute settlement mechanisms that are incorporated into a written warranty.

[2] 40 FR 60168 (Dec. 31, 1975).

[3] In addition, many online retailers also operate ''brick-and-mortar'' operations and still provide paper copies of warranties for review by customers who do not do business online.

submission to OMB. Applying a 20% reduction to its previous estimates, the staff now assumes that large manufacturers spend an average of 33.6 hours per year and that small manufacturers spend an average of 8 hours per year to comply with the Rule. Accordingly, the total annual burden incurred by manufacturers is approximately 130,968 hours ((581 large manufacturers × 33.6 hours) + (13,935 small manufacturers × 8 hours)).

Thus, the total annual burden for all covered entities is approximately 2,446,610 hours (2,315,608 hours for retailers + 131,002 hours for manufacturers).

Total annual labor cost: $53,825,000 (rounded to nearest thousand).

The work required to comply with the Pre-Sale Availability Rule entails a mix of clerical work and work performed by sales associates. Staff estimates that half of the total burden hours would likely be performed by sales associates. At the manufacturing level, this work would entail ensuring that the written warranty accompanies every consumer product or that the required warranty information otherwise gets to the retailer. At the retail level, this work would entail ensuring that the written warranty is made available to the consumer prior to sale. The remaining half of the work required to comply with the Pre-Sale Availability Rule is clerical in nature, e.g., shipping or otherwise providing copies of manufacturer warranties to retailers and retailer maintenance of them. Applying a sales associate wage rate of $25/hour to half of the burden hours and a clerical wage rate of $19/hour to half of the burden hours, the total annual labor cost burden is approximately $53,825,420 (1,223,305 hours × $25 per hour) + (1,223,305 hours × $19 per hour).[4]

Total annual capital or other non-labor costs: De minimis.

The vast majority of retailers and warrantors already have developed systems to provide the information the Rule requires. Compliance by retailers typically entails keeping warranties on file, in binders or otherwise, and posting an inexpensive sign indicating warranty availability. Manufacturer compliance entails providing retailers with a copy of the warranties included with their products.

Request for Comments

You can file a comment online or on paper. Write ''Pre-Sale Availability Rule: Paperwork Comment, FTC File No. P044403'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest. Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, the Commission encourages you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/presaleavailabilitypra,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Pre-Sale Availability Rule: Paperwork Comment, FTC File No. P044403'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 13, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Christian S. White,

Deputy General Counsel for Legal Counsel.

[FR Doc. 2013–27307 Filed 11–13–13; 8:45 am]

BILLING CODE 6750–01–P

[4] The wage rates used in this Notice reflect recent data from the Bureau of Labor Statistics, Occupational Employment and Wages (May 2012).

GOVERNMENT ACCOUNTABILITY OFFICE

Exposure Draft—Standards for Internal Control in the Federal Government

AGENCY: U.S. Government Accountability Office.

ACTION: Notice of Comment Period Extension.

SUMMARY: The US Government Accountability Office (GAO) is extending the comment period for the proposed revisions to the Standards for Internal Control in the Federal Government, known as the ''Green Book,'' to January 15, 2014. We are requesting public comments on the proposed revisions in the exposure draft. The proposed changes contained in the 2013 Exposure Draft update to the Standards for Internal Control in the Federal Government reflect major developments in the accountability and financial management profession and emphasize specific considerations applicable to the government environment.

The draft of the proposed changes to Standards for Internal Control in the Federal Government, 2013 Exposure Draft, is available and can be downloaded from GAO's Web page at *www.gao.gov.* All comments will be considered a matter of public record and will ultimately be posted on the GAO Web page.

DATES: The exposure period will be from September 2, 2013 to January 15, 2014.

ADDRESSES: Comment letters should be emailed to *GreenBook@gao.gov.* Please include Comment Letter in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: For information on the Standards for Internal Control in the Federal Government please contact Kristen Kociolek, Assistant Director, Financial Management and Assurance telephone 202–512–2989, 441 G Street NW., Washington, DC 20548–0001.

Authority: 31 U.S.C. 3512(c), (d).

James Dalkin,

Director, Financial Management and Assurance, U.S. Government Accountability Office.

[FR Doc. 2013–27183 Filed 11–13–13; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–20883–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit a new Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting that ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before January 13, 2014.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–20883–60D for reference.

Information Collection Request Title: Support and Services at Home (SASH) Participant Survey

Abstract: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) is requesting approval from the Office of Management and Budget (OMB) to conduct a survey of Support And Services at Home (SASH) participants to assess the impact of the SASH program on health outcomes. Information collected includes general health status, functional status, quality of life, medication problems and dietary issues. The SASH program operates in Vermont and links staff based in housing properties with a team of community-based health and supportive services providers to help older adults coordinate and manage their care needs. SASH services include: assessment by a multidisciplinary team, creation of an individualized care plan, on-site nursing and care coordination with team members and other local partners, and community activities to support health and wellness. SASH is anchored in affordable senior housing properties, serving residents in the property and seniors living in the surrounding community.

The goal of this project is to conduct a comprehensive evaluation of the SASH program. The evaluation will assess whether the SASH model of coordinated health and supportive services in affordable housing improves quality of life, health and functional status of participants. The evaluation has been designed to comprehensively address the research questions while minimizing the burden placed on the SASH program staff, their partners (e.g., service providers), and Medicare and dually eligible Medicare and Medicaid beneficiaries. The mail survey is designed to collect outcomes that cannot be measured from claims data or other sources. We will use brief, standardized scales with demonstrated reliability and validity in older adults. Information collected in the survey is not of a sensitive nature. Questions in the beneficiary survey are confined to health outcomes. RTI International will conduct and analyze the survey. RTI has experience doing similar work for ASPE and other government clients.

Need and Proposed Use of the Information: To determine the impact of the SASH program on quality of life, health and functional status of participants. Care has been taken to ensure that there is no overlap between other ongoing state evaluations. Through discussions with SASH program staff and other state officials in Vermont, we determined that the information we seek to collect is not already being collected from our proposed sample, nor can it be measured from claims data. As a result of these efforts, the information collected through the survey will not duplicate any other effort and is not obtainable from any other source.

Likely Respondents: The target population for the survey is Medicare beneficiaries participating in the Support and Services at Home (SASH) demonstration. SASH provides integrated, home-based services to beneficiaries in selected housing properties throughout Vermont. At this point, 1,685 intervention beneficiaries have been identified in 37 SASH sites.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
SASH Participant Survey	669	1	20/60	223
Total	669	1	20/60	223

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Darius Taylor,

Deputy, Information Collection Clearance Officer.

[FR Doc. 2013–27244 Filed 11–13–13; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Special Emphasis Panel (SEP) meeting on *''AHRQ RFA–HS14–002, Addressing Methodological Challenges in Research for Patients With Multiple Chronic Conditions (R21)''.* Each SEP meeting will commence in open session before closing to the public for the duration of the meeting.

DATES: November 14, 2013 (*Open on November 14 from 8:00 a.m. to 8:30 a.m. and closed for the remainder of the meeting*).

ADDRESSES: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878

FOR FURTHER INFORMATION CONTACT: Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting should contact: Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone: (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Each SEP meeting will commence in open session before closing to the public for the duration of the meeting. The SEP meeting referenced above will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2, section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). Grant applications for the ''AHRQ RFA–HS14–002, Addressing Methodological Challenges in Research for Patients With Multiple Chronic Conditions (R21)'' are to be reviewed and discussed at this meeting. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: November 5, 2013.

Richard Kronick,

AHRQ Director.

[FR Doc. 2013–27174 Filed 11–13–13; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Special Emphasis Panel (SEP) meeting on *''AHRQ RFA–HS14–001, Rapid Secondary Analysis to Optimize Care for Patients with Multiple Chronic Conditions (R01)''.* Each SEP meeting will commence in open session before closing to the public for the duration of the meeting.

DATES: November 13, 2013 (*Open on November 13 from 8:00 a.m. to 8:30 a.m. and closed for the remainder of the meeting*).

ADDRESSES: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

FOR FURTHER INFORMATION CONTACT: Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting should contact: Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone: (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Each SEP meeting will commence in open session before closing to the public for the duration of the meeting. The SEP meeting referenced above will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2, section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). Grant applications for the ''AHRQ RFA–HS14–001, Rapid Secondary Analysis to Optimize Care for Patients with Multiple Chronic Conditions (R01)'' are to be reviewed and discussed at this meeting. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: November 5, 2013.

Richard Kronick,

AHRQ Director.

[FR Doc. 2013–27173 Filed 11–13–13; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Senior Executive Service Performance Review Board Membership

The Agency for Healthcare Research and Quality (AHRQ) announces the appointment of members to the AHRQ Senior Executive Service (SES) Performance Review Board (PRB). This action is being taken in accordance with 5 U.S.C. 4314(c)(4), which requires notice of appointment of members to performance review boards to be published in the **Federal Register**.

Members of the PRB are appointed in a manner that will ensure consistency, stability and objectivity in the SES performance appraisals. The function of the PRB is to make recommendations to the Director, AHRQ, relating to the performance of senior executives in the Agency.

The following persons will serve on the AHRQ SES Performance Review Board:

Irene Fraser; Stephen B. Cohen; William Munier; David Meyers; Michael Fitzmaurice; Phyllis Zucker; Mark Handelman; Jean Slutsky;

For further information about the AHRQ Performance Review Board, contact Ms. Alison Reinheimer, Office of Management Services, Agency for Healthcare Research and Quality, 540 Gaither Road, Suite 4010, Rockville, Maryland 20850.

Dated: November 5, 2013.

Richard Kronick,

AHRQ Director.

[FR Doc. 2013–27169 Filed 11–13–13; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–14–13QQ]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to Kimberly S. Lane, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 30 days of this notice.

Proposed Project

Older Adult Safe Mobility Assessment Tool—NEW—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2010, there were 40 million adults aged 65 or older in the U.S., representing 13% of the U.S. population. By 2030, this segment of the population will increase to an estimated 72 million or 20%. People now aged 65 are expected to live well into their 80s with the vast majority preferring to ''age in place'' (i.e., grow old in their current homes). With most adults aging in place, rather than in retirement or nursing homes, it is absolutely critical to better prepare communities and older Americans for what is on the horizon.

There is widespread agreement that older adults in the U.S. do not adequately plan for their future mobility needs, nor are most aware of existing mobility resources in their communities. Thus, when an individual's mobility becomes impaired they are ill prepared to adapt their lifestyle to their changing needs. A process of mobility assessment would begin to address this situation and aid older adults in meeting their changing mobility needs.

At present there are numerous mobility-related assessments actively used throughout the U.S. Most are designed to collect information from just one particular mobility silo, such as assessments that focus on fall prevention. None of these existing tools cut across mobility silos while focusing on older adults. None create a national picture of older adult safe mobility that captures an individual's physical and emotional health, their social network, or the ease of mobility in their home, transportation, their neighborhood, their city, and beyond. And no existing older adult tools are both mobility holistic and empowerment driven self-administered assessments. The data collected in this project will allow CDC to develop a Tool that can help older adults both assess and improve their complete mobility.

This project involves developing, refining and validating a Safe Mobility Assessment Tool that allows older adults to assess their current mobility situation, learn about mobility challenges that may affect them in the future, and receive actionable feedback on how to improve and protect their mobility. The information collected in this project will be used to refine and improve the Tool, as well as to conduct feasibility and audience acceptability analysis of the Tool. This information will allow CDC to create the most useful Safe Mobility Assessment Tool possible for U.S. older adults.

CDC requests OMB approval for one year to collect both qualitative and quantitative data in order to develop and refine the Tool, and assess feasibility and audience acceptability. Qualitative data collection will include key informant interviews, focus groups, and intercepts in urban and rural communities. In brief, these methods will include key informant interviews of community stakeholders (three stakeholder interviews in two states for a total of six key informant interviews); older adult consumer focus groups (two focus groups in two states with seven people each for a total of fourteen participants); and older adult consumer intercepts (thirty intercepts in two rural locations and ten intercepts in two urban locations for a total of forty intercepts). The qualitative data collection will be used to help inform a quantitative stage of work to include a national sample of geographically and socio-demographically diverse older adults (N = 1,000) who will be recruited and interviewed by telephone. The key informant interviews, focus groups, intercepts and telephone survey data collection will allow us to gain information about the feasibility and usefulness of the Older Adult Safe Mobility Tool; about what impacts the Tool may have on older adults (e.g., motivation to change/behavior intent, and changes in knowledge, attitude, and awareness); about which mobility domains are most valuable to include in the Tool (e.g., which are of greatest interest and can be improved by older adults), and about what other areas of the Tool could be refined and improved. This information will allow us to create a final version of the Safe Mobility Assessment Tool that can be used by older adults across the U.S. to protect and enhance their mobility.

CDC anticipates that data collection will begin in December 2013 and that all data collection will be completed by July 2014. CDC estimates the following burden for one-time respondents: Key informant interviews will be administered to 6 individuals and will take approximately 30 minutes to complete for a total burden of 3 hours, focus groups will be conducted for 14 older adults requiring up to 15 minutes per participant to review the consent form and screener and 120 minutes to participate in the focus group for a total burden of 32 hours, intercept interviews will be administered to 40 older adults requiring up to 15 minutes to review the consent and screener form and 30 minutes to participate in the interview for a total burden of 30 hours, and the telephone survey will survey 1000 older adults involving an on-your-own review of materials (approximately 15 minutes) and a pre-scheduled telephone survey (approximately 27 minutes) for a total burden of 700 hours.

Key informant interviews and the quantitative survey will be conducted by telephone. As telephone survey participants are recruited, they may elect to receive stimulus material (i.e., a draft version of the Tool) prior to the survey either by mail or electronically via email, whichever they prefer. In addition, focus group participants may receive communications (confirmation and reminder notices) via email or mail. Email communication will be used with key informant, focus group and telephone survey respondents, however each will be given the option of mail rather than email as their preferred communication method. Email will be provided not only as a courtesy to respondents, for those respondents that prefer email rather than mail, but also, it will allow more open and swift communication between CDC and the study participants. Additionally, recruitment/screening for the focus groups and telephone surveys, as well as administration of the telephone surveys will use Computer Assisted Telephone Interview (CATI) systems for data collection, which are designed to reduce the burden to respondents.

There are no costs to respondents other than their time. The total estimated annual burden hours are 765.

ESTIMATE ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Response burden (in hours)
Key informant interview respondents	Interview guide	6	1	30/60
Focus group respondents	Respondent Consent & Screener	14	1	15/60
	Moderator guide	14	1	2
Intercept respondents	Respondent Consent & Screener	40	1	15/60
	Intercept script	40	1	30/60
Telephone survey respondents	Respondent Consent & Screener	1000	1	15/60
	Survey	1,000	1	27/60

Kimberly S. Lane,

Deputy Director, Office of Science Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–27274 Filed 11–13–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day 14–14BX]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery—NEW—Centers for Disease Control and Prevention (CDC), Office of the Associate Director for Communication (OADC).

As part of a Federal Government-wide effort to streamline the process to see feedback from the public on service delivery, the CDC has submitted a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et. Seq.).

To request additional information, please contact Kimberly S. Lane, Centers for Disease Control and Prevention, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalization will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received no comments in response to the 60-day notice published in the **Federal Register** on December 22, 2010 (75 FR 80542).

This is a new collection of information. Individual respondents can participate in the telephone survey voluntary. Below we provide CDC's projected annualized estimate for next three years. There is no cost to respondents other than their time. The estimated annualized burden hours for this data collection activity are 4,000.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of collection	Average number of respondents	Annual frequency per response	Average number of activities	Average hours per response
Interactive Voice Surveys, Online Surveys	60,000	1	1	4/60

Kimberly S. Lane,

Deputy Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–27275 Filed 11–13–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: ACF Program Instruction: Children's Justice Act.

OMB No.: 0980–0196.

Description: The Program Instruction, prepared in response to the enactment of the Childrens Justice Act (CJA), Title II of Public Law. 111–320, Child Abuse Prevention and Treatment Act Reauthorization of 2010, provides direction to the States and Territories to accomplish the purposes of assisting States in developing, establishing and operating programs designed to improve: (1) The assessment and investigation of suspected child abuse and neglect cases, including cases of suspected child sexual abuse and exploitation, in a manner that limits additional trauma to the child and the child's family; (2) the assessment and investigation of cases of suspected child abuse-related fatalities and suspected child neglect-related fatalities; (3) the investigation and prosecution of cases of child abuse and neglect, including child sexual abuse and exploitation; and (4) the assessment and investigation of cases involving children with disabilities or serious health-related problems who are suspected victims of child abuse or neglect. This Program Instruction contains information collection requirements that are found in P. L. 111–320 at Sections 107(b) and 107(d), and pursuant to receiving a grant award. The information being collected is required by statute to be submitted pursuant to receiving a grant award. The information submitted will be used by the agency to ensure compliance with the statute; to monitor, evaluate and measure grantee achievements in addressing the investigation and prosecution of child abuse and neglect; and to report to Congress.

Respondents: State Governments

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application & Annual Report	52	1	60	3,120
Estimated total annual burden hours				3,120

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2013–27221 Filed 11–13–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1152]

Agency Information Collection Activities; Proposed Collection; Comment Request; Petition to Request an Exemption From 100 Percent Identity Testing of Dietary Ingredients: Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information and to allow 60 days for public comment in response to the notice. This notice invites comments on the information collection provisions of our existing regulations governing petitions to request an exemption from 100 percent identity testing of dietary ingredients.

DATES: Submit either electronic or written comments on the collection of information by January 13, 2014.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Petition To Request an Exemption From 100 Percent Identity Testing of Dietary Ingredients: Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements—21 CFR 111.75(a)(1)(ii) (OMB Control Number 0910–0608)—Extension

The Dietary Supplement Health and Education Act (Pub. L. 103–417) added section 402(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 342(g)), which provides, in part, that the Secretary of Health and Human Services (the Secretary) may, by regulation, prescribe good manufacturing practices for dietary supplements. Section 402(g)(1) of the FD&C Act states that a dietary supplement is adulterated if ''it has been prepared, packed, or held under conditions that do not meet current good manufacturing practice regulations.'' Section 701(a) of the FD&C Act (21 U.S.C. 371(a)) gives us the authority to issue regulations for the efficient enforcement of the FD&C Act.

Part 111 of our regulations (21 CFR part 111) establishes the minimum Current Good Manufacturing Practice (CGMP) necessary for activities related to manufacturing, packaging, labeling, or holding dietary supplements to ensure the quality of the dietary supplement. Section 111.75(a)(1) of our regulations (21 CFR 111.75(a)(1)) establishes a procedure for a petition to request an exemption from 100 percent identity testing of dietary ingredients. According to § 111.75(a)(1)(ii), manufacturers may request an exemption from the requirements set forth in § 111.75(a)(1)(i) when the dietary ingredient is obtained from one or more suppliers identified in the petition. The regulation clarifies that we are willing to consider, on a case-by-case basis, a manufacturer's conclusion, supported by appropriate data and information in the petition submission, that it has developed a system that it would implement as a sound, consistent means of establishing, with no material diminution of assurance compared to the assurance provided by 100 percent identity testing, the identity of the dietary ingredient before use.

Section 111.75(a)(1) reflects our determination that manufacturers that test or examine 100 percent of the incoming dietary ingredients for identity can be assured of the identity of the ingredient. However, we recognize that it may be possible for a manufacturer to demonstrate, through various methods and processes in use over time for its particular operation, that a system of less than 100 percent identity testing would result in no material diminution of assurance of the identity of the dietary ingredient as compared to the assurance provided by 100 percent identity testing. To provide an opportunity for a manufacturer to make such a showing and reduce the frequency of identity testing of components that are dietary ingredients from 100 percent to some lower frequency, we added to § 111.75(a)(1), an exemption from the requirement of 100 percent identity testing when a manufacturer petitions the Agency for such an exemption to 100 percent identity testing under 21 CFR 10.30 and the Agency grants such exemption. Such a procedure would be consistent with our stated goal, as described in the CGMP final rule, of providing flexibility in the CGMP requirements. Section

111.75(a)(1)(ii) sets forth the information a manufacturer is required to submit in such a petition. The regulation also contains a requirement to ensure that the manufacturer keeps our response to a petition submitted under § 111.75(a)(1)(ii) as a record under § 111.95. The collection of information in § 111.95 has been approved under OMB Control No. 0910–0606.

Description of Respondents: The respondents to this collection of information are firms in the dietary supplement industry, including dietary supplement manufacturers, packagers and re-packagers, holders, labelers and re-labelers, distributors, warehouses, exporters, importers, large businesses, and small businesses.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section; CGMP requirements for dietary supplements	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
111.75(a)(1)(ii)	1	1	1	8	8

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In the last 3 years, we have not received any new petitions to request an exemption from 100 percent identity testing of dietary ingredients; therefore, the Agency estimates that one or fewer petitions will be submitted annually. Based on our experience with petition processes, we estimate it will take a requestor about 8 hours to prepare the factual and legal information necessary to support a petition for exemption and to prepare the petition. Although we have not received any new petitions to request an exemption from 100 percent identity testing of dietary ingredients in the last 3 years, we believe that OMB approval of these information collection provisions should be extended to provide for the potential future need of a firm in the dietary supplement industry to petition for an exemption from 100 percent identity testing of dietary ingredients.

Dated: November 7, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–27222 Filed 11–13–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1393]

Agency Information Collection Activities; Proposed Collection; Comment Request; Patent Term Restoration, Due Diligence Petitions, Filing, Format, and Content of Petitions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's patent term restoration regulations on due diligence petitions for regulatory review period revision. Where a patented product must receive FDA approval before marketing is permitted, the Office of Patents and Trademarks may add a portion of the FDA review time to the term of a patent. Petitioners may request reductions in the regulatory review time if FDA marketing approval was not pursued with ''due diligence.''

DATES: Submit either electronic or written comments on the collection of information by January 13, 2014.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Patent Term Restoration, Due Diligence Petitions, Filing, Format, and Content of Petitions—21 CFR Part 60 (OMB Control Number 0910–0233)—Extension

FDA's patent extension activities are conducted under the authority of the Drug Price Competition and Patent Term Restoration Act of 1984 (21 U.S.C. 355(j)) and the Generic Animal Drug and Patent Term Restoration Act of 1988 (35 U.S.C. 156). New human drug, animal drug, human biological, medical device, food additive, or color additive products regulated by the FDA must undergo FDA safety, or safety and effectiveness, review before marketing is permitted. Where the product is covered by a patent, part of the patent's term may be consumed during this review, which diminishes the value of the patent. In enacting the Drug Price Competition and Patent Term Restoration Act of 1984 and the Generic Animal Drug and Patent Term Restoration Act of 1988, Congress sought to encourage development of new, safer, and more effective medical and food additive products. It did so by authorizing the U.S. Patent and Trademark Office (PTO) to extend the patent term by a portion of the time during which FDA's safety and effectiveness review prevented marketing of the product. The length of the patent term extension is generally limited to a maximum of 5 years, and is calculated by PTO based on a statutory formula. When a patent holder submits an application for patent term extension to PTO, PTO requests information from FDA, including the length of the regulatory review period for the patented product. If PTO concludes that the product is eligible for patent term extension, FDA publishes a notice that describes the length of the regulatory review period and the dates used to calculate that period. Interested parties may request, under § 60.24 (21 CFR 60.24), revision of the length of the regulatory review period, or may petition under § 60.30 (21 CFR 60.30) to reduce the regulatory review period by any time where marketing approval was not pursued with ''due diligence.''

The statute defines due diligence as ''that degree of attention, continuous directed effort, and timeliness as may reasonably be expected from, and are ordinarily exercised by, a person during a regulatory review period.'' As provided in § 60.30(c), a due diligence petition ''shall set forth sufficient facts, including dates if possible, to merit an investigation by FDA of whether the applicant acted with due diligence.'' Upon receipt of a due diligence petition, FDA reviews the petition and evaluates whether any change in the regulatory review period is necessary. If so, the corrected regulatory review period is published in the **Federal Register**. A due diligence petitioner not satisfied with FDA's decision regarding the petition may, under § 60.40 (21 CFR 60.40), request an informal hearing for reconsideration of the due diligence determination. Petitioners are likely to include persons or organizations having knowledge that FDA's marketing permission for that product was not actively pursued throughout the regulatory review period. The information collection for which an extension of approval is being sought is the use of the statutorily created due diligence petition.

Since 1992, 15 requests for revision of the regulatory review period have been submitted under § 60.24(a). For 2010, 2011, and 2012, a total of three requests have been submitted under § 60.24(a). During that same time period, there have been no requests under §§ 60.30 and 60.40; however, for purposes of this information collection approval, we are estimating that we may receive one submission annually.

FDA estimates the burden of this information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
60.24(a)	1	1	1	100	100
60.30	1	1	1	50	50
60.40	1	1	1	10	10
Total					160

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 8, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–27226 Filed 11–13–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2000–N–0110]

Bruce I. Diamond; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying Dr. Bruce I. Diamond's request for a hearing and is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) debarring Dr. Diamond for 10 years from providing services in any capacity to a person who has an approved or pending drug product application. FDA bases this order on findings that Dr. Diamond was convicted of felonies under State law for conduct relating to the development or approval of a drug product or otherwise relating to the regulation of a drug product under the FD&C Act, was convicted of felonies involving fraud, and was a material participant in acts forming the basis of a conviction that subjects another person to debarment. In determining the appropriateness and length of Dr. Diamond's debarment period, FDA has evaluated the relevant considerations listed in the FD&C Act. Dr. Diamond has failed to file with the Agency information and analysis sufficient to create a basis for a hearing concerning this action.

DATES: This order is effective November 14, 2013.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: G. Matthew Warren, Office of Scientific Integrity, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–4613.

SUPPLEMENTARY INFORMATION:

I. Background

On December 16, 1997, Dr. Diamond pled guilty to 53 State criminal offenses, including felonies, in the Superior Court for the County of Richmond, Georgia, and the court subsequently entered judgment against him. The offenses in the Official Code of Georgia to which

Dr. Diamond pled guilty included 16 counts of theft by taking (section 16–8–2), 10 counts of theft of services (section 16–8–5), 2 counts of written false statements (section 16–10–20), 8 counts of acquiring a controlled substance by misrepresentation (section 16–13–43), 8 counts of prescribing or ordering dangerous drugs (section 16–13–78.1), 7 counts of prescription of controlled substances (section 16–13–41(f)), 1 count of practicing medicine without a license (section 43–34–26), and 1 count of bribery (section 16–10–2). On February 10, 1999, in a separate proceeding, Dr. Diamond consented to disqualification from receiving investigational new drugs under § 312.70(b) (21 CFR 312.70(b)).

Dr. Diamond, who holds a doctorate in pharmacology but not a medical degree, was a professor on the faculty of the Medical College of Georgia (MCG), a unit of the Board of Regents of the University System of Georgia. Dr. Diamond collaborated with a colleague there, Richard Borison, M.D., Ph.D., to manage clinical trials for various drug companies. Without the knowledge or consent of MCG, Drs. Diamond and Borison used MCG and other government-owned facilities and State employees to conduct the clinical trials but diverted the funds paid by the study sponsors for their own gain, without compensating the university system. Although Dr. Diamond is not a physician, he managed medical aspects of the clinical trials. In that capacity, he signed Dr. Borison's name on prescriptions for controlled substances and other drugs the State defined as dangerous. During the course of one clinical trial, Drs. Borison and Diamond bribed an employee not to report to MCG an attempted suicide by one of the study subjects.

By notice dated November 26, 2002, FDA proposed to debar Dr. Diamond for 10 years from providing services in any capacity to a person having an approved or pending drug product application. The notice explained that the proposal was based on three separate grounds: (1) Dr. Diamond was convicted of felonies under State law for conduct relating to the development or approval, including the process for development or approval, of any drug product or otherwise relating to the regulation of drug products under the FD&C Act, and the type of conduct serving as the basis of his convictions undermines the process for the regulation of drugs (section 306(b)(2)(B)(i)(I) of the FD&C Act (21 U.S.C. 335a(b)(2)(B)(i)(I))); (2) Dr. Diamond was convicted of felonies involving bribery, fraud, and false statement, and, on the basis of the convictions and other information, demonstrated a pattern of conduct sufficient to find that there is reason to believe that he may violate requirements under the FD&C Act relating to drug products (section 306(b)(2)(B)(ii)(I); and (3) Dr. Diamond materially participated in acts that were the basis of Dr. Borison's conviction of offenses subjecting Dr. Borison to debarment under section 306(b)(2)(B)(ii) and Dr. Diamond's participation, and other information, demonstrate a pattern of conduct sufficient to find that there is reason to believe that he may violate requirements under the FD&C Act relating to drug products (section 306(b)(2)(B)(iii)). The notice to Dr. Diamond also outlined findings with respect to four factors that were considered in determining the appropriateness and period of debarment, as provided in section 306(c)(3) of the FD&C Act: (1) The nature and seriousness of the offense, (2) the nature and extent of management participation in the offense, (3) the nature and extent of voluntary steps to mitigate the impact on the public, and (4) prior convictions under the FD&C Act or other acts involving matters within the jurisdiction of FDA.

By letter dated January 2, 2003, through counsel, Dr. Diamond requested a hearing on the proposal to debar. On February 17, 2004, after FDA granted him extensions, Dr. Diamond submitted a ''final response'' in support of his request for a hearing on the proposal to debar. In his response, Dr. Diamond argues: (1) That his consent agreement for disqualification under § 312.70(b) precludes his debarment, (2) that he is innocent of the charge of bribery, (3) that he is innocent of the charges involving drug prescribing, (4) that assertions that he used unqualified personnel to staff clinical trials are without justification or support, (5) that research subject safety was not compromised under his supervision, and (6) that he did not serve in a managerial role for the criminal conduct because Dr. Borison exercised control over him at all times.

Hearings are granted only if there is a genuine and substantial issue of fact. Hearings will not be granted on issues of policy or law, on mere allegations, denials, or general descriptions of positions and contentions, or on data and information insufficient to justify the factual determination urged or the action requested (*see* § 12.24(b) (21 CFR 12.24(b))).

The Chief Scientist has considered Dr. Diamond's arguments and concludes that they are unpersuasive and fail to raise a genuine and substantial issue of fact requiring a hearing.

II. Arguments

In support of his hearing request, Dr. Diamond presents six issues that we will presume are intended to call into question whether he is subject to debarment—and, if so, whether FDA should debar him—on the basis of any of the three grounds, section 306(b)(2)(B)(i)(I), (b)(2)(B)(ii)(I), and (b)(2)(B)(iii) of the FD&C Act, upon which FDA relied. We therefore address each of his arguments as a challenge to the grounds for debarment or to FDA's conclusions regarding the considerations in section 306(c)(3) of the FD&C Act, as appropriate.

A. Disqualification Consent Agreement

Dr. Diamond first argues that the consent agreement for his disqualification from receiving investigational drugs under § 312.70(b) precludes his debarment under section 306 of the FD&C Act. In support, he contends that the consent agreement ''should have precluded any further administrative action against [him].''

The consent agreement states that the ''agreement closes FDA's administrative proceedings *in the present matter*'' (emphasis added). A debarment action under section 306 of the FD&C Act is an entirely separate matter from disqualification proceedings. FDA has the authority to disqualify a researcher from conducting clinical testing of new drugs when it determines that the researcher has repeatedly or deliberately not followed regulations intended to protect study subjects and ensure data integrity. (*See* § 312.70(a).) FDA also may debar from the drug industry individuals involved in certain conduct. Once an individual has been debarred, he may no longer provide services in any capacity for anyone with a drug product application that is approved or pending at FDA. (*See* section 306(a) and (b) of the FD&C Act.)

Furthermore, the consent agreement itself does not foreclose other types of administrative actions, such as debarment under section 306 of the FD&C Act. Finally, there is no statutory basis for concluding that the Agency's decision to disqualify Dr. Diamond from receiving investigational drugs under a separate process precludes his debarment. Accordingly, we conclude that there is no genuine and substantial issue of fact for resolution at a hearing and that the consent agreement regarding Dr. Diamond's disqualification does not prevent his debarment. (*See* § 12.24(b)(1).)

B. Debarment Under Section 306(b)(2)(B)(i)(I) or 306(b)(2)(B)(ii)(I) of the FD&C Act

Dr. Diamond's next two arguments focus on the conduct underlying his convictions for bribing an employee not to report an attempted suicide by a study subject and unlawfully acquiring and prescribing controlled substances and dangerous drugs. Dr. Diamond does not deny that he was convicted of those offenses, nor does he dispute that this type of conduct subjects him to permissive debarment under the FD&C Act. Rather, he argues that he is innocent of the charges and that ''due to his need to reach a plea agreement with the State of Georgia to the charges that he misappropriated money from the State, he entered in to a complex and not wholly supported in fact plea agreement'' and he ''accepted perhaps too much when he pled guilty.''

Section 306(b)(2)(B)(i)(I) of the FD&C Act provides FDA with authority to debar an individual who has been convicted of certain State felonies, if the Agency finds that the type of conduct serving as the basis for the conviction undermines the process for the regulation of drugs. The relevant factual issues are whether Dr. Diamond was, in fact, convicted of a felony under State law for conduct relating to the development or approval of a drug product or otherwise relating to the regulation of drug products under the FD&C Act and whether that type of conduct undermines the process for the regulation of drugs. Dr. Diamond does not dispute that he pled guilty to bribery and unlawful prescriptions for controlled substances and dangerous drugs or that this type of conduct undermines the process for the regulation of drugs. Dr. Diamond has therefore failed to show that a genuine and substantial factual dispute exists with respect to FDA's finding that he is subject to debarment under section 306(b)(2)(B)(i)(I) of the FD&C Act.

In the alternative, section 306(b)(2)(B)(ii)(I) of the FD&C Act provides FDA with authority to debar an individual who has been convicted of a felony involving, among other things, bribery, false statements, or fraud, if the Agency finds that the individual has demonstrated a pattern of conduct sufficient to find that there is reason to believe he may violate requirements under the FD&C Act relating to drug products. The relevant factual issues are whether Dr. Diamond was convicted of a felony involving bribery, false statements, or fraud and whether he has demonstrated a pattern of conduct sufficient to find that there is reason to believe he may violate requirements under the FD&C Act relating to drug products. Dr. Diamond does not dispute that he pled guilty to felonies involving bribery, false statement, and fraud, namely theft of over $10 million from MCG by an 8-year pattern of deception, bribing an employee, making written false statements, acquiring controlled substances by misrepresentation, prescribing dangerous drugs and controlled substances while not being a registered practitioner, and practicing medicine without a license. FDA further determined that the type of conduct underlying Dr. Diamond's felony convictions, which were based on the 8-year conspiracy to defraud MCG through a scheme involving clinical studies, demonstrated ''a pattern of conduct sufficient to find that there is reason to believe [Dr. Diamond] may violate requirements relating to drug products again.'' This determination was based on the nature of the conduct underlying the offenses to which Dr. Diamond pled guilty. Dr. Diamond has therefore failed to show that a genuine and substantial factual dispute exists with respect to FDA's finding that he is subject to debarment under section 306(b)(2)(B)(ii)(I) of the FD&C Act.

Section 306(*l*) of the FD&C Act includes in its definition of a conviction, a guilty plea. Accordingly, Dr. Diamond's arguments regarding the factual circumstances underlying his plea fail to raise a genuine and substantial issue of fact as to whether he was convicted of a felony under State law for conduct relating to the development or approval of a drug product or otherwise relating to the regulation of a drug product under the FD&C Act or whether he was convicted of a felony involving bribery, false statements, or fraud. Dr. Diamond contends that his plea agreement was ''not wholly supported in fact.'' In his Written Plea of Guilty, however, Dr. Diamond states that ''of my own free will I want to plead guilty today to the offenses [enumerated] . . . know and understand that I do not have to say, sign, or do anything that will show or tend to show that I am guilty unless I want to . . . My decision to plead guilty is freely and voluntarily made . . . I did in fact commit the offenses of which I am charged. I am in fact guilty as charged in the indictment and am in fact guilty of the charges I am pleading guilty to.'' He also stated that he was advised by competent counsel regarding his constitutional and due process rights. He was examined by the court during a lengthy plea colloquy. Under these circumstances, and in light of the court's acceptance of his guilty plea, Dr. Diamond's allegations that he was actually innocent of the offenses and that he signed a plea agreement that was not wholly truthful are insufficient to create a genuine and substantial issue of fact for resolution at a hearing. (*See* § 12.24(b)(1) and (b)(2).) Therefore, Dr. Diamond is subject to debarment.

C. Debarment Under Section 306(b)(2)(B)(iii) of the FD&C Act

Finally, FDA found that Dr. Diamond is subject to debarment under section 306(b)(2)(B)(iii) of the FD&C Act for his material participation in the acts that resulted in another's conviction for an offense described in section 306(b)(2)(B)(ii)(I) and that on that basis, Dr. Diamond had demonstrated a pattern of conduct sufficient to support a belief that he would violate requirements under the FD&C Act relating to drug products. On September 30, 2003, FDA debarred Dr. Diamond's co-conspirator, Dr. Borison, under section 306(b)(2)(B)(ii)(I) of the FD&C Act, for his conviction of felonies under State law for racketeering, theft, and false statements and representations. (*See Richard L. Borison; Debarment Order,* 68 FR 56298 (September 30, 2003).) Dr. Diamond does not deny his material participation in the conduct that led to Dr. Borison's conviction. In particular, he does not deny participating with Dr. Borison in the theft of over $10 million from MCG via an 8-year pattern of deception involving clinical trials. Furthermore, he does not dispute that his behavior demonstrates a pattern of conduct sufficient to support a finding that he would violate requirements under the FD&C Act relating to drug products. Dr. Diamond has therefore failed to show that a genuine and substantial factual dispute exists with respect to FDA's finding that he is subject to debarment under section 306(b)(2)(B)(iii) of the FD&C Act.

D. Debarment Considerations

Next, we construe Dr. Diamond's arguments regarding his innocence of the charges of bribery and unlawful prescriptions to be challenges to FDA's findings with respect to the debarment considerations of section 306(c)(3) of the FD&C Act. Dr. Diamond's arguments regarding the training and qualifications of the staff he oversaw as part of his criminal scheme and the safety of the subjects who participated in the clinical studies also seem to be directed at those findings. As noted previously, he also challenges FDA's finding that he participated as a manager in the offenses involved because, he claims, Dr. Borison controlled him and masterminded the entire criminal operation.

Section 306(c)(3) of the FD&C Act requires that FDA consider, ''where applicable,'' certain factors ''[i]n determining the appropriateness and the period of debarment'' for any permissive debarment. The proposal to debar Dr. Diamond set forth four applicable considerations under section 306(c)(3) of the FD&C Act: (1) The nature and seriousness of his offense under section 306(c)(3)(A), (2) the nature and extent of management participation in the offense under section 306(c)(3)(B), (3) the nature and extent of voluntary steps taken to mitigate the impact on the public under section 306(c)(3)(C), and (4) prior convictions involving matters within the jurisdiction of FDA under section 306(c)(3)(F).

In its proposal to debar, FDA presented factual findings relevant to each of the considerations. FDA determined, under section 306(c)(3)(A) of the FD&C Act, that the nature and seriousness of Dr. Diamond's offenses weighed in favor of debarment because of the scope of his criminal conduct, his prescription of drugs without a practitioner's license, and his direction of inadequately trained staff to perform medical procedures, creating a risk of injury. The Agency found, under section 306(c)(3)(B) of the FD&C Act, that Dr. Diamond's management participation in the offenses weighed in favor of debarment. The Agency found that Dr. Diamond was a manager in that he ''plann[ed] . . ., directed, and initiated the conduct underlying [his] conviction'' and ''directed other MCG employees to recruit subjects and participate in the conduct of the clinical studies.'' Under section 306(c)(3)(C) of the FD&C Act, the Agency determined that, although Dr. Diamond cooperated with the authorities once they discovered his criminal scheme, he did not ''promptly disclose to authorities all wrongdoing'' and exhibited a wanton disregard for the public health by bribing an employee to remain silent about a suicide attempt. This factor also was found to weigh in favor of disbarment. Finally, relating to section 306(c)(3)(F) of the FD&C Act, FDA noted that the Agency is unaware of any prior convictions under the FD&C Act, a favorable factor.

Dr. Diamond first appears to challenge these findings by arguing that he is actually innocent of the bribery and unlawful prescriptions charges. As noted previously, however, his claims of actual innocence do not create a genuine and substantial issue of fact, as they must to justify a hearing under § 12.24(b). Dr. Diamond pled guilty to those offenses in Federal Court, and he is bound by his guilty pleas, notwithstanding his current arguments that he pled guilty to those offenses only for strategic reasons.

Dr. Diamond also contests the Agency's characterization of the conduct underlying his criminal convictions, as well as his material participation in the offenses committed by Dr. Borison. However, in pleading guilty to 52 criminal offenses, Dr. Diamond admitted to certain conduct. The conduct to which he admitted during the plea colloquy included overseeing a staff of nine employees to assist in running the clinical trials, bribing an employee not to report an adverse event, and prescribing controlled substances without a medical license. The offenses to which Dr. Diamond pled guilty stemmed from an 8-year scheme to deceive a medical college and his concurrent disregard for the protection of patients afforded by State laws.

By contending that the employees he oversaw did, in fact, have adequate training in drawing blood and that his conduct did not compromise the safety of any patients, Dr. Diamond is challenging FDA's proposed findings regarding the nature and seriousness of any offenses involved under section 306(c)(3)(A) of the FD&C Act and the nature and extent of voluntary steps taken to mitigate the effect on the public under section 306(c)(3)(C). Even assuming, as Dr. Diamond now argues, that the nine employees he oversaw had received adequate training in drawing blood and that no patient was actually harmed by Dr. Diamond's conduct, the 8-year scheme in which he participated still evinces both a clear disregard for the laws designed to protect patients and the public at large and a willingness to commit fraud in furtherance of his own financial gain. Dr. Diamond had 8 years to voluntarily mitigate the effects of his wrongdoing but failed even to modify his behavior to protect the public. Furthermore, Dr. Diamond's arguments that he did not compromise the safety of his patients are belied by his convictions for violating numerous State criminal statutes clearly aimed at protecting patients, such as practicing medicine without a license and unlawfully acquiring and prescribing controlled or dangerous drugs. In short, given the scope of Dr. Diamond's conduct, his current claims regarding the training of his employees and the safety of his patients are inadequate to create a genuine and substantial issue of fact with respect to the considerations in sections 306(c)(3)(A) and (c)(3)(C) or, more generally, the appropriateness or period of his proposed debarment.

Finally, Dr. Diamond challenges the Agency's findings under section 306(c)(3)(B) of the FD&C Act that he participated as a manager in his offenses by arguing that Dr. Borison exercised control over him and masterminded the criminal scheme. As noted previously and as outlined in the indictment to which he pled guilty, however, Dr. Diamond served a managerial role in the offenses. Even assuming, as Dr. Diamond now alleges, that he was at all times second in command to Dr. Borison, Dr. Diamond admitted during his criminal proceedings that he oversaw a staff of a least nine employees in implementing the criminal scheme of which he was convicted. Furthermore, he does not dispute the findings in the proposal to debar that he, along with Dr. Borison, was involved in planning and initiating the criminal scheme. Dr. Diamond's claim that he was ''at all times subservient to Dr. Borison'' fails to present a genuine and substantial issue of fact with respect to the consideration in section 306(c)(3)(B) of the FD&C Act or, more generally, the appropriateness or period of his proposed debarment.

Consistent with the findings in the proposal to debar, the Chief Scientist finds, based on the undisputed record before the Agency, that debarment of Dr. Diamond for two consecutive terms of 5 years is appropriate. The considerations in section 306(c)(3)(A), (c)(3)(B), and (c)(3)(C) of the FD&C Act weigh in favor of debarring Dr. Diamond for at least 10 years. Although Dr. Diamond appears to have no previous criminal convictions related to matters within the jurisdiction of FDA (see section 306(c)(3)(F) of the FD&C Act), that consideration does not counter to a sufficient degree the remaining considerations to warrant decreasing the periods of debarment. Of particular note are the nature and seriousness of Dr. Diamond's offenses. As detailed previously, Dr. Diamond pled guilty to an 8-year criminal scheme reflecting not only, as found in the proposal to debar, ''a wanton disregard for the public health,'' but also a willingness to defraud a government body over a sustained period of time. Reducing the period of debarment from 10 years to some lesser amount of time based on Dr. Diamond's lack of prior criminal convictions would be inconsistent with protecting the public health and thus the remedial purpose of the Agency's debarment authority under section 306 of the FD&C Act.

II. Findings and Order

Therefore, the Chief Scientist, under section 306(b)(2)(B)(i)(I) of the FD&C

Act, or in the alternative section 306(b)(2)(B)(ii)(I) and (b)(2)(B)(iii) and under authority delegated to him, finds that Dr. Diamond is subject to debarment. The Chief Scientist has considered the relevant factors listed in section 306(c)(3) of the FD&C Act and determined that debarment for 10 years is appropriate.

As a result of the foregoing findings, Dr. Diamond is debarred for 10 years from providing services in any capacity to a person with an approved or pending drug product application under section 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**) (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(iii) and 21 U.S.C. 321(dd)). Any person with an approved or pending drug product application who knowingly uses the services of Dr. Diamond, in any capacity during his period of debarment, will be subject to civil money penalties. If Dr. Diamond, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Dr. Diamond during his period of debarment.

Any application by Dr. Diamond for termination of debarment under section 306(d) of the FD&C Act should be identified with Docket No. FDA–2000–N–0110 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the Internet may obtain documents in the Docket at *http://www.regulations.gov/*.

Dated: November 4, 2013.

Jesse L. Goodman,

Chief Scientist.

[FR Doc. 2013–27186 Filed 11–13–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1279]

Medical Device Development Tools; Draft Guidance for Industry, Tool Developers, and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Medical Device Development Tools.'' This document provides guidance to FDA staff, industry, healthcare providers, researchers, and patient and consumer groups on a new voluntary process within the Center for Devices and Radiological Health (CDRH) for qualification of medical device development tools (MDDT) for use in device development and evaluation programs. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by February 12, 2014.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Medical Device Development Tools'' to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Kathryn O'Callaghan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3614, Silver Spring, MD 20993–0002, 301–796–6349.

SUPPLEMENTARY INFORMATION:

I. Background

The draft guidance describes the framework and process for the voluntary CDRH qualification of MDDT, including definitions of applicable terms, criteria for evaluating an MDDT for a specific context of use, the threshold for qualification, and the contents of a qualification submission. The intent of this voluntary qualification policy is to: (1) Enable faster, more efficient development of important life-saving and health-promoting medical devices; (2) promote the development of tools to facilitate more timely device evaluation; (3) provide a mechanism to better leverage advances in regulatory science; and (4) more quickly and more clearly communicate with CDRH stakeholders about important advances in regulatory science that may be leveraged to speed device development and regulatory evaluation. CDRH expects the qualification process to expedite development of publicly available tools which could potentially be used widely in multiple device development programs. Once an MDDT is qualified for a specific context of use, it can be used by any medical device developer for that context of use.

At some point in the future, FDA may initiate a pilot program for MDDT qualification submissions, which would help inform final guidance on this topic. FDA would publicly announce such a program prior to initiation.

This guidance does not discuss the review of MDDTs submitted as part of a specific medical device regulatory submission, nor does it address the specific evidentiary standards or performance requirements needed for purposes of qualification of a specific MDDT.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on the qualification of MDDTs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all

CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov*. To receive ''Medical Device Development Tools,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1882 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance contains information collection that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 807 subpart E have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 809 have been approved under OMB control number 0910–0485.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

Dated: November 4, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–27233 Filed 11–13–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0880]

Draft Guidance for Industry on Frequently Asked Questions About Medical Foods; Second Edition; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is reopening the comment period for the draft guidance for industry entitled ''Frequently Asked Questions About Medical Foods; Second Edition.'' We are reopening the comment period in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: Submit either electronic or written comments by December 16, 2013.

ADDRESSES: Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Shawne Suggs-Anderson, Center for Food Safety and Applied Nutrition (HFS–850), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1783.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 13, 2013 (78 FR 49271), we published a notice announcing the availability of an updated draft guidance for industry entitled ''Frequently Asked Questions About Medical Foods; Second Edition.'' (We had published earlier versions of the guidance in May 1997 and May 2007.) The draft guidance, when finalized, will update some responses to questions that appeared in earlier versions of the guidance and add new questions and responses regarding the definition, labeling, and availability of medical foods. We invited comment on the draft guidance by October 15, 2013.

II. Request for Comments

Following publication of the August 13, 2013, notice of availability, we received requests for a 60-day extension of the comment period. The requesters explained that they needed more time to review the guidance, develop comments, and assemble data.

If all of the guidance in the August 13, 2013, version were new, a reopening of the comment period for 60 additional days might be warranted. However, much of the draft guidance remains unchanged from our last revision in 2007. The additional content focuses on FDA's thinking relating to use of medical foods under supervision by a physician, whether medical foods should be sold by prescription only, and types of diseases and conditions that a medical food could be used to manage. We are, therefore, reopening the comment period for the draft guidance for an additional 30 days, until December 16, 2013. We believe that this reopening allows adequate time for interested persons to submit comments without significantly delaying further FDA action on this draft guidance. (We initially intended to extend the comment period, but, due to the lapse in appropriations and resulting cessation of many government operations from October 1 through October 16, 2013, we were unable to issue a notice extending the comment period before October 15, 2013; consequently, we are reopening the comment period for an additional 30 days.)

III. How To Submit Comments

Interested persons may submit either electronic comments regarding the draft guidance to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and may be posted to the docket at *http://www.regulations.gov.*

Dated: November 7, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–27213 Filed 11–13–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–1994–D–0007]

Guidance for Industry: Studies To Evaluate the Utility of Anti-Salmonella Chemical Food Additives in Feeds; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Request for comments.

SUMMARY: The Food and Drug Administration (FDA) is considering revising the guidance entitled ''Guidance for Industry: Studies to Evaluate the Utility of Anti-*Salmonella* Chemical Food Additives in Feeds,'' and is seeking comments on this guidance before revisions are made.

DATES: Submit electronic or written comments by January 13, 2014.

ADDRESSES: Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Xin Li, Center for Veterinary Medicine (HFV–222), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6863, *xin.li@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

One of the key objectives of Guidance for Industry: Studies to Evaluate the Utility of Anti-*Salmonella* Chemical Food Additives in Feeds (GFI #80) is to help sponsors design efficacy studies to support the submission of Food Additive Petitions (FAPs) for food additives intended for anti-*Salmonella* use in food for animals. We would like to revise GFI #80 because science, technology, and FDA policy have changed since this guidance was last revised.

GFI #80 currently addresses only chemical food additives intended to maintain feeds or feed ingredients *Salmonella*-negative. We intend to expand the scope of this guidance to address other categories of food additives beyond chemical food additives, and to cover all food for animals, including pet food.

Before we revise the content of GFI #80 we intend to consider your answers to the following questions:

1. What intended technical effects can we expect to see in FAPs submitted to FDA for anti-*Salmonella* use of the food additives in food for animals?
2. How should efficacy studies be designed for the intended technical effects described in your response to question 1?
3. Should experimental lots of animal food used in both laboratory and field studies be *Salmonella*-negative, but not sterile, prior to inoculation?
4. What inoculation levels of *Salmonella* are appropriate for experimental lots of animal food used in laboratory and field studies? Please justify your comment with scientific evidence.
5. What methods should be used to inoculate experimental lots of animal food used in laboratory and field studies?
6. What sampling criteria should be used to provide statistical confidence that *Salmonella* will be captured among samples collected? Please justify your comment with scientific evidence.
7. What methods should be used to enumerate the level(s) of *Salmonella* in animal food?
8. What are the key elements for designing field studies?
9. What are the difficulties faced by sponsors when designing and conducting field studies?
10. What types of facilities are available to conduct field studies?

Electronic versions of GFI #80 are in the docket at *http://www.regulations.gov* and on FDA's Web site at *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm*.

II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

Dated: November 5, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–27194 Filed 11–13–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, December 04, 2013, 01:00 p.m. to December 04, 2013, 05:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on November 05, 2013, 78 FR 214 Pg. 66371.

The meeting will start on December 3, 2013 at 12:00 p.m. and end December 3, 2013 at 5:00 p.m.

The meeting location remains the same. The meeting is closed to the public.

Dated: November 7, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–27172 Filed 11–13–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Fellowships and Dissertations.

Date: December 6, 2013.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Karen Gavin-Evans, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Boulevard, Room 6153, MSC 9606, Bethesda, MD 20892, 301–451–2356, *gavinevanskm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: November 7, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–27171 Filed 11–13–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Brain Injury and Neurovascular Pathologies.

Date: December 2, 2013.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander Yakovlev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892–7846, 301–435–1254, *yakovleva@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Biomedical Computing and Health Informatics Study Section.

Date: December 10, 2013.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Melinda Jenkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, 301–437–7872, *jenkinsml2@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

Date: December 10–11, 2013.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kenneth A Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 7, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–27170 Filed 11–13–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2013–0030; OMB No. 1660–0046]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before December 16, 2013.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or email address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Emergency Management Institute (EMI) Independent Study Course Enrollment Application.

Type of information collection: Revision of a currently approved information collection.

Form Titles and Numbers: FEMA Form 064–0–9, Emergency Management Institute (EMI) Independent Study Course Enrollment Application.

Abstract: The EMI Independent Study program office collects data from FEMA Form 064–0–9 to create and update student records and provide students with credit for training completion. The system also allows FEMA to track completions and failures of course exams. The data on the electronic form will be encrypted and sent to the server to be parsed into the Independent Study database.

Affected Public: Individuals and households, business or other for-profit, not for profit institutions, farms, Federal government, State, local or tribal government.

Estimated Number of Respondents: 2,148,746.

Estimated Total Annual Burden Hours: 4,297,492.

Estimated Cost: There are no annual capital, start-up, and operation or maintenance costs associated with this collection.

Dated: November 7, 2013.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2013–27264 Filed 11–13–13; 8:45 am]

BILLING CODE 9111–72–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0024; OMB No. 1660–0022]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before December 16, 2013.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or email address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Community Rating System (CRS) Program—Application Worksheets and Commentary.

Type of Information Collection: Revision of a currently approved information collection.

Form Titles and Numbers: FEMA Form 086–0–35, Community Rating System Application Letter of Interest and Quick Check Instructions; FEMA Form 086–0–35A, Community Annual Recertification; and FEMA Form 086–0–35B, Environmental and Historic Preservation Certifications.

Abstract: The CRS Application and Certifications are used by communities that participate in the National Flood Insurance Program's (NFIP) Community Rating System (CRS) to document activities that communities have undertaken to mitigate against future flood losses. The CRS Application and Certifications provide a step-by-step process for communities to follow in their efforts to achieve the maximum amount of discount on flood insurance premiums. CRS is a voluntary program where flood insurance costs are reduced in communities that implement practices, such as building codes and public education activities, that are recognized as reducing risks of flooding and promoting the purchase of flood insurance.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 1,274.

Estimated Total Annual Burden Hours: 32,908 hours.

Estimated Cost: There are no estimated operational, maintenance, capital or start-up costs associated with this information collection.

Dated: November 7, 2013.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2013–27271 Filed 11–13–13; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–100]

Notice of Emergency Approval of an Information Collection: Regional Analysis of Impediments Guidance for Sustainable Communities Grantees

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, HUD has requested from the Office of Management and Budget (OMB) emergency approval of the information collection described in this notice.

DATES: *Comments Due Date:* November 18, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Lynnette McRae, Grants Management Specialist, Office of Sustainable Housing and Communities, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Lynnette McRae at *lynnette.mcrae@hud.gov* or telephone 202–402–2102. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. McRae.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Regional Analysis of Impediments Guidance for Sustainable Communities Grantees.

OMB Approval Number: N/A.

Type of Request: New Collection.

Form Number: N/A.

Description of the need for the information and proposed use: HUD's Office of Sustainable Housing and Communities presently requires all Sustainable Communities Initiative (SCI) Regional Planning grantees to complete a Fair Housing Equity Assessment . The grantees each have the option of choosing to develop a Regional Analysis of Impediments (AI) in lieu of the FHEA, which (if prepared in accordance with the standards set forth below and in the Fair Housing Planning Guide) would fulfill the FHEA requirement as well as the HUD AFFH regulatory requirement for any participating jurisdiction or state that signed on. The option to prepare a regional AI also offers SCI grantees an opportunity to develop more meaningful deliverables while conserving resources and reducing duplication. This guidance, a written product reflecting the information shared in the 2012 online webinars, will assist grantees in structuring their fair housing analyses.

Respondents: Sustainable Communities Regional Planning Grantees.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Total	40	Every 5 years	8	200	1600	$40	$64,000

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 8, 2013.

Anna Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–27256 Filed 11–13–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–101]

Notice of Emergency Approval of an Information Collection: Record of Employee Interview

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, HUD has requested from the Office of Management and Budget (OMB) emergency approval of the information collection described in this notice.

DATES: *Comments Due Date:* November 21, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Saundra A. Green, Administrative Officer, Office of Labor Relations, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 2124 or telephone (202) 402–5537 (this is not a toll-free number) or email at *Saundra.A.Green@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Saundra Green.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Record of Employee Interview.

OMB Approval Number: 2501–0009.

Type of Request: Extension of a currently approved collection.

Form Number: HUD–11 and HUD 11–SP (Spanish).

Description of the need for the information and proposed use: The information is used by HUD and agencies administering HUD programs to collect information from laborers and mechanics employed on projects subjected to the Federal Labor Standards provisions. The information collected is compared to information submitted by the respective employer on certified payroll reports. The comparison tests the accuracy of the employer's payroll data and may disclose violations. Generally, these activities are geared to the respondent's benefit that is to determine whether the respondent was underpaid and to ensure the payment of wage restitution to the respondent.

Respondents: (i.e. affected public): Business.

Estimated Number of Respondents: 20,000.

Estimated Number of Responses: 20,000.

Frequency of Response: On occasion.

Average Hours per Response: .25.

Total Estimated Burdens: 5,000.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 8, 2013.

Anna Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–27258 Filed 11–13–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5746–N–01]

Performance Review Board

AGENCY: Office of the Deputy Secretary, HUD.

ACTION: Notice of appointments.

SUMMARY: The Department of Housing and Urban Development announces the appointments of, Maurice A. Jones, Michael A. Anderson, Towanda A. Brooks, Kenneth M. Leventhal, Susan J. Shuback, Jemine A. Bryon, Stanley A. Gimont, John P. Benison, David R. Ziaya, Damon Y. Smith, Mary K. Kinney, Charles S. Coulter, Jean Lin Pao, Ricky T. Valentine, and Mary E. McBride as members of the Departmental Performance Review Board. The address is: Department of

Housing and Urban Development, Washington, DC 20410–0050.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Juliette Middleton, Director, Office of Executive Resources, Department of Housing and Urban Development, Washington, DC 20410. Telephone (202) 402–3058. (This is not a toll-free number.)

Dated: November 7, 2013.

Maurice A. Jones,

Deputy Secretary.

[FR Doc. 2013–27259 Filed 11–13–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2013–N199; FXES11120300000F2–234–FF03E00000]

NiSource, Inc.; Record of Decision, Habitat Conservation Plan, Environmental Impact Statement, and Permit Issuance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

We, the U.S. Fish and Wildlife Service (Service), are advising the public of the availability of the Record of Decision (hereafter, ''ROD'') on an Incidental Take Permit (hereafter, ''ITP'') issued pursuant to the Endangered Species Act of 1973, as amended (ESA). The ITP authorizes NiSource, Inc., to take 10 federally listed species over a 50-year period. For availability of the record of decision and associated documents, see **ADDRESSES**.

DATES: The ROD is available effective September 13, 2013.

ADDRESSES: *Document availability:* The ROD and other documents associated with the decision are available for review, subject to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a.) and Freedom of Information Act, by any of the following methods:

- *Internet:* You may access an electronic copy of the ROD and related documents on the Internet at *http://www.fws.gov/midwest/endangered/permits/hcp/r3hcps.html.*
- *U.S. Mail:* You may obtain an electronic copy of the ROD, Final Environmental Impact Statement, and Multi-Species Habitat Conservation Plan on compact disk by submitting a request in writing to the U.S. Fish and Wildlife Service within 30 days of the date of publication of this notice; see **FOR FURTHER INFORMATION CONTACT.**
- *In-Person:* Printed copies of the documents are available for public inspection and review (by appointment only), at the office listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Thomas J. Magnuson, Regional HCP Coordinator, U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; 612–713–5467.

SUPPLEMENTARY INFORMATION: We are advising the public of the availability of the ROD associated with an ITP application received from NiSource, Inc., pursuant to the ESA. The ITP issued to NiSource authorizes the take of 10 federally listed species over a 50-year period.

NiSource prepared a multi-species habitat conservation plan (MSHCP) to cover a suite of activities associated with operation, maintenance, and construction of their existing natural gas pipeline system in the States of Delaware, Indiana, Kentucky, Louisiana, Maryland, Mississippi, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

The Service was the lead Federal agency for review of the application and preparation of the Final Environmental Impact Statement (FEIS) for the proposed permit issuance. The Federal Energy Regulatory Commission (FERC), the U.S. Army Corps of Engineers (USACE), the U.S. Department of Agriculture (USDA) Forest Service (FS) Eastern Region and Southern Region, and the National Park Service (NPS) Southeast Region served as cooperating agencies. Availability of the FEIS was published in the **Federal Register** on June 7, 2013 (78 FR 34402), and June 14, 2013 (78 FR 35928).

Background

NiSource, Inc., headquartered in Merrillville, Indiana, is engaged in natural gas transmission, storage, and distribution, as well as electric generation, transmission, and distribution. NiSource, Inc.'s wholly owned pipeline subsidiaries, Columbia Gas Transmission, LLC; Columbia Gulf Transmission LLC; Crossroads Pipeline Company; Central Kentucky Transmission Company; and NiSource Gas Transmission and Storage Company (companies referred to collectively as ''NiSource''), are interstate natural gas companies whose primary operations are subject to the Natural Gas Act (15 U.S.C. 717) and fall under the jurisdiction of the Federal Energy Regulatory Commission (FERC) and the U.S. Department of Transportation (USDOT). NiSource applied for authorization under the ESA to take species in the course of engaging in otherwise lawful gas transmission and storage operations. An ITP application under the ESA requires submission of a Habitat Conservation Plan in conjunction with the application.

On July 16, 2009, NiSource filed an application with the Service for a section 10(a)(1)(B) ITP for 10 ESA-listed species known to occur within NiSource's operating territory. These species include the Indiana bat (*Myotis sodalis*), bog turtle (*Glyptemys muhlenbergii*), Madison Cave isopod (*Antrolana lira),* clubshell mussel (*Pleurobema clava),* northern riffleshell mussel (*Epioblasma torulosa rangiana),* fanshell mussel (*Cyprogenia stegaria),* James spinymussel (*Pleurobema collina*), sheepnose mussel (*Plethobasus cyphyus),* Nashville crayfish (*Orconectes shoupi*), and American burying beetle (*Nicrophorus americanus).* The MSHCP was prepared to cover a 50-year timeframe.

The Covered Land for the MSHCP and ITP includes 12 counties in Maryland, Ohio, Pennsylvania, and West Virginia, and a 1-mile-wide corridor associated with 15,562 miles of existing NiSource right-of-way within the 14 aforementioned States.

The Covered Activities, or those NiSource activities that fall under the purview of the MSHCP, include a wide range of operation, maintenance, and new construction activities that are specific to NiSource's wholly owned pipeline subsidiaries and to the Covered Land specified in the MSHCP.

The MSHCP evaluated 42 species that could potentially occur within the NiSource Covered Land, and that could potentially be impacted by NiSource Covered Activities. However, after analysis of the 42 species and the Covered Land, it was concluded that NiSource Covered Activities will not adversely impact 32 of the 42 species evaluated. Therefore, NiSource requested incidental take for the remaining 10 species, for which take could be minimized, but not avoided.

In addition to the 42 species evaluated in the MSHCP, 47 additional ESA-listed, proposed, or candidate species are either known to occur or potentially occur within the NiSource Covered Land. Potential impacts to these species are discussed in the FEIS and in the Service's Biological Opinion.

NEPA Compliance

Issuance of an ITP by the Service to NiSource is a Federal action that may affect the quality of the human environment and therefore is subject to review under the National Environmental Policy Act (NEPA). To comply with the NEPA, the Service prepared an FEIS which analyzed potential impacts that could result from issuance of an ITP to NiSource and the subsequent implementation of their MSHCP. The ROD that is made available at this time announces the Service's decision to issue the ITP and is the final decision under the NEPA.

Public Involvement

On October 11, 2007, the Service published a Notice of Intent (NOI) to prepare an EIS in the **Federal Register** (72 FR 57953), to solicit participation of Federal, State, and local agencies, Tribes, and the public to determine the scope of the EIS and provide input relative to issues associated with the proposed MSHCP project. In addition to the publication of the NOI, the scoping process included informal stakeholder and agency consultations, 13 public scoping meetings, and a mailing to approximately 1,300 known interested parties. Public scoping continued until December 8, 2007, and the Scoping Report is appended to the FEIS.

In accordance with the NEPA, a draft EIS and MSHCP were circulated for public review and comment. The public review period was initiated with the publication of the Notice of Availability (NOA) in the **Federal Register** on July 13, 2011 (76 FR 41288), and the public comment period was extended for an additional 90 days (76 FR 63950). Three public meetings were announced in the NOA, and were held in Columbus, Ohio, on August 16, 2011; Lexington, Kentucky, on August 17, 2011; and Charleston, West Virginia, on August 18, 2011. The comment period closed on December 13, 2011. A variety of comments were received on the DEIS and associated MSHCP, and are available for request by the methods described under **ADDRESSES**. Responses to these comments are appended to the FEIS.

Availability of the FEIS was announced in the **Federal Register** on June 7, 2013 (78 FR 34402), and June 14, 2013 (78 FR 35928). Comments received in response to the Notice of Availability of the FEIS are discussed in the ROD.

Authority

We provide this notice under Section 10(c) of the ESA (16 U.S.C. 1531, 1539(c)) and its implementing regulations (50 CFR 17.22 and 17.32), and the NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR Part 46). We evaluated the application, associated documents, and comments submitted to determine whether the application met the requirements of section 10(a)(1)(B) of the ESA. The Service has made its decision to issue an ITP to NiSource for the take of 10 species in accordance with their MSHCP and associated IA.

Dated: November 6, 2013.

Lynn Lewis,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2013–27230 Filed 11–13–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000 L51010000.ER0000.LVRWK09K0990.13X]

BLM Director's Response to the Idaho Governor's Appeal of the BLM Idaho State Director's Governor's Consistency Review Determination

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is publishing this notice to explain why the BLM Director is denying the Governor of Idaho's recommendations regarding the Proposed Land Use Plan Amendments analyzed in the Gateway West Final Environmental Impact Statement (EIS).

FOR FURTHER INFORMATION CONTACT: Brian Amme, Acting Division Chief for Decision Support, Planning and NEPA, telephone 202–912–7289; address 1849 C Street NW., Room 2134LM, Washington, DC 20240; email *bamme@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours. A copy of the Gateway West Final EIS and Proposed Land Use Plan Amendments is available on the BLM Wyoming Web site at: *http://www.wy.blm.gov/nepa/cfodocs/gateway_west/index.html*.

SUPPLEMENTARY INFORMATION: On April, 26, 2013, the BLM released the Gateway West Final EIS and Proposed Land Use Plan Amendments. On June 27, 2013, the Governor of Idaho (Governor) submitted a Governor's Consistency Review and Finding of Inconsistency for the Gateway West Final EIS and Proposed Land Use Plan Amendments (Finding) to the BLM Idaho State Director (State Director). The State Director determined the Governor's Finding was outside the scope of the Governor's Consistency Review process and did not accept the Governor's recommendations. A written response was sent to the Governor on July 26, 2013, addressing the issues raised in the Governor's Finding.

On August 23, 2013, the Governor appealed the State Director's decision not to accept his recommendations to the BLM Director. The BLM Director issued a final response to the Governor affirming the State Director's decision. Pursuant to 43 CFR 1610.3–2, the substantive portions of the Director's response to the Governor are printed as follows:

''With regard to your Greater Sage-Grouse Plan concerns, your letter did not identify inconsistencies between your Plan and any of the BLM proposed land use plan amendments for the Gateway West Transmission Project. The regulations that provide for the Governor's consistency review process at 43 CFR 1610.3–2, require BLM to ensure that resource management plans or plan amendments 'are consistent with officially approved or adopted' State and local government resource related plans, and policies and programs in those plans so long as the plans 'are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands.' The regulations further provide the Governor of the State involved in a proposed plan or amendment to identify inconsistencies between State or local plans and the proposed plan or amendment and provide recommendations to the BLM State Director. The consistency review submitted by the Governor must identify, with specificity, how a proposed plan amendment is inconsistent with specific State or local plans. If the State Director denies such recommendations, the Governor is afforded an opportunity to appeal the BLM State Director's denial of recommendations to the BLM Director pursuant to 43 CFR 1610.3–2(e).

''Your letter to the BLM State Director and your appeal do not meet the regulatory requirements by specifically identifying inconsistencies between the Greater Sage-Grouse Plan and the proposed land use plan amendments in the Gateway West Transmission Project FEIS. Your appeal only generally states that your Plan, which you submitted to the BLM on July 1, 2013, is inconsistent with the Gateway West National Environmental Policy Act (NEPA) process. The scope of the Governor's consistency review process is narrow. It is limited to the proposed land use plan amendment associated with the Gateway West Project and does not include the remainder of the project application or wholesale challenges to impacts analyzed in the FEIS. The absence of any identification of a specific inconsistency supports my decision to deny the recommendations in your appeal.

''Your appeal also requests clarification of BLM Idaho's statement that your Greater Sage-Grouse Plan was 'not sufficiently final' to be considered in the FEIS. While the Plan may represent a final proposal from you, the larger Greater Sage-Grouse planning effort being undertaken by the BLM in coordination with the U.S. Fish and Wildlife Service and other states, including Idaho, is not yet final. The Idaho BLM State Director was attempting to explain that the Greater Sage-Grouse planning effort and the Gateway West Transmission Project represented two separate and distinct processes. Your plan is one of two co-preferred alternatives being fully analyzed in the Idaho and Southwestern Montana Greater Sage-Grouse Draft Resource Management Plan Amendment/Draft Environmental Impact Statement (DEIS). As we have discussed in person, the BLM is very committed to continuing to work with the State of Idaho on Greater Sage-Grouse to meet our shared goals. We have appreciated your efforts to develop a thoughtful and detailed alternative.

''With respect to Idaho's Local Land Use Planning Act, your letter to the BLM Idaho State Director and your appeal again do not specifically identify inconsistencies between local comprehensive plans and the proposed land use plan amendments for the Gateway West Transmission Project. Instead, you generally state that local counties have jurisdiction over the siting of utility transmission corridors, and that these local governments have comprehensive planning and zoning plans. You suggest that the local governments prefer that transmission siting occur on Federal land. Finally, you suggest that the BLM's review process for the Gateway West Transmission Project lacked meaningful public involvement. No specific inconsistencies between proposed land use plan amendments for the Gateway West Transmission Project and State or local plans were identified as required under BLM regulations, and thus, I am denying your consistency appeal as it relates to Idaho's Local Land Use Planning Act.

''The BLM has taken considerable steps to coordinate with the local counties. In fact, the BLM coordinated extensively with local governments in the development of alternatives that crossed their jurisdictions, including meetings with the Cities of Melba and Kuna and various counties. Additionally, the BLM recognizes that after the Record of Decision is signed, the individual counties have authority under Idaho's Local Land Use Planning Act to adjust the final location for the portions of each proposed action or alternative that are located on non-federal land.

''After careful consideration, it is my conclusion that the appeal has not identified where the proposed plan amendments are inconsistent with specific provisions of approved or adopted resource-related State or local policies and programs. Therefore, I affirm the BLM Idaho State Director's response to your Finding of Inconsistency and deny the appeal.''

Authority: 43 CFR 1610.3–2(e).

Michael D. Nedd,

Assistant Director, Minerals and Realty Management.

[FR Doc. 2013–27262 Filed 11–13–13; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDT000000.L11200000.DD0000.241A.00]

Notice of Public Meetings, Twin Falls District Resource Advisory Council, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Twin Falls District Resource Advisory Council (RAC) and subcommittee for the Greater sage-grouse will meet as indicated below.

DATES: On November 26 and December 10, the Twin Falls District RAC subcommittee members for the Greater sage-grouse will meet at the Twin Falls District BLM Office, 2536 Kimberly Road, Twin Falls, ID 83301. The meeting will begin at 6:00 p.m. and end no later than 9:00 p.m. The public comment period for the RAC subcommittee meeting will take place 6:10 p.m. to 6:40 p.m. On January 8, 2014, the Twin Falls District RAC will meet at the Sawtooth Best Western Inn, 2653 South Lincoln Ave., Jerome, Idaho. The meeting will begin at 9:00 a.m., and end no later than 4:30 p.m. The public comment period will take place from 9:10 a.m. to 9:40 a.m.

FOR FURTHER INFORMATION CONTACT: Heather Tiel-Nelson, Twin Falls District, Idaho, 2536 Kimberly Road, Twin Falls, Idaho 83301, (208) 736–2352.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. During the November 26th and December 10th meetings, RAC subcommittee members will discuss the Idaho and Southwest Montana Sub-regional Draft Environmental Impact Statement during the January 8th meeting, RAC subcommittee members will report to the full RAC with their recommendations for the Draft EIS. There will also be a new member orientation for RAC members along with field manager reports, a budget outlook and wild horse issue update.

Additional topics may be added and will be included in local media announcements. More information is available at *www.blm.gov/id/st/en/res/resource_advisory.3.html*. RAC meetings are open to the public.

Dated: November 4, 2013.

Mel M. Meier,

District Manager.

[FR Doc. 2013–27224 Filed 11–13–13; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000/51010000.ER0000/LVRWK09K0990/241A; WYW–174598; IDI–35849]

Notice of Availability of the Record of Decision for the Gateway West 230/345/500-kV Transmission Line Project and Approved Land Use Plan Amendments in Idaho and Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) authorizing a right-of-way (ROW) grant to the Proponents' (Idaho Power Company and PacifiCorp, doing business as Rocky Mountain Power) to construct, operate, maintain, and decommission electric transmission lines on public lands for the Gateway

West 230/345/500-kilovolt (kV) Transmission Line Project (Project) and approving Land Use Plan (LUP) Amendments in Idaho and Wyoming. The Wyoming State Director's signature on the ROD constitutes the final decision of the BLM and makes the approved LUP Amendments effective immediately.

ADDRESSES: Copies of the ROD are being sent to Federal, State, and local governments, public libraries in the Project area, and interested parties who previously requested a copy. The ROD and supporting documents will be available electronically on the following Web site: *http://www.wy.blm.gov/nepa/cfodocs/gateway_west/*. To request a copy, contact Walt George, Project Manager, BLM Wyoming State Office, P.O. Box 20879, Cheyenne, WY 82003.

FOR FURTHER INFORMATION CONTACT: Walt George, Project Manager, Bureau of Land Management, Wyoming State Office, P.O. Box 20879, Cheyenne, WY 82003, or by telephone at 307–775–6116. Any persons wishing to be added to a mailing list of interested parties may write or call the Project Manager at this address or phone number. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: In May 2007, the Proponents submitted a ROW application to the BLM requesting authorization to construct, operate, maintain, and decommission electric transmission lines on public lands. The application was revised in October 2007, August 2008, May 2009, January 2010, February 2012, and August 2013, to reflect changes to the proposed Project.

The Gateway West Transmission Line Project, with a capacity of 1,500 megawatts, is planned from Glenrock, Wyoming, to the Hemingway Substation, approximately 20 miles southwest of Boise, Idaho. The Project is approximately 990 miles long and composed of nine 500-kV segments, one short 345-kV sub segment, and one segment with two 230-kV lines. Approximately 482 miles cross Federal lands, 73 miles cross State-managed lands, and 435 miles cross private lands. Of the Federal lands crossed, approximately 461 miles cross the National System of Public Lands administered by the BLM; 14 miles cross National Forest Lands; and 7 miles cross lands administered by the Bureau of Reclamation.

The Proponents' objective for the Project is to improve the reliability and efficiency of both utilities' systems and to address congestion problems with the western electrical grid. The Project is needed to meet projected load growth in the Proponents' service areas. The Project would also tap the developing renewable energy market, especially wind energy in Idaho and Wyoming, and aid in delivering that energy throughout the region.

The BLM purpose and need for this action is to respond to a ROW application, submitted under Section 501 of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. § 1761(a)), to use public lands for an electric transmission system and related facilities in accordance with FLPMA's multiple use and sustained yield mandates.

The BLM published a Notice of Intent in the **Federal Register** on May 16, 2008 (73 FR 28425), stating its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) (40 CFR 1501.7). The BLM is the lead Federal agency for the NEPA analysis process and preparation of the EIS. The Notice of Intent initiated the public scoping comment period that concluded on July 3, 2008. In response to a request from non-Federal cooperating agencies, the scoping period was extended to September 4, 2009, to allow time to develop additional alternatives. On July 29, 2011, the BLM published the Notice of Availability for the Draft EIS in the **Federal Register** (76 FR 45609), starting a 90-day public comment period. On June 29, 2012, the BLM released the Addendum to the Draft EIS—Effects of Proposed Project on Greater Sage-Grouse—for an additional 30-day public comment period. The report included the Greater Sage-Grouse habitat equivalency analysis, which was not available at the time the Draft EIS was released.

The Final EIS was developed incorporating updated environmental analysis as well as the extensive input from public comments, stakeholder outreach, interagency collaboration, and government-to-government consultation with Native American Tribes in the Project area. The Final EIS analyzed the environmental consequences of the No Action alternative, the proposed action, 36 route alternatives, and land use plan amendments. On April 26, 2013, the BLM published the Notice of Availability of the Final EIS (78 FR 24771), triggering a final 60-day public review period. Printed and electronic copies of the Draft EIS, Addendum to the Draft EIS, and Final EIS are available at the Wyoming State Office and posted online at *http://www.wy.blm.gov/nepa/cfodocs/gateway_west/*.

In response to comments made on the Final EIS, a number of adjustments were made to the BLM's Preferred Routes, and several of the mitigation measures were revised. All mitigation measures are included in the ROD. Three micro-siting reroutes were included in Segment 4 of the Project to address concerns raised by Lincoln County and the City of Cokeville, as well as to avoid landslide hazards and private lands protected under conservation easements. These reroutes were assessed based on analysis in the Final EIS that covers the same general areas, as well as additional site-specific analysis. A report discussing the micro-siting considerations and reroutes in detail is included with the ROD. The ROD includes the BLM's response to comments on the Final EIS as well as an errata sheet listing corrections to the Final EIS document.

The decision is to authorize Segments 1 through 7 and Segment 10 of the Project and to allow the various Federal, State, and local permitting agencies additional time to offer input on a routing decision in Segments 8 and 9 of the Project in Idaho. The BLM Wyoming State Director signed the ROD, which constitutes the final decision of the BLM and makes the ROW and LUP amendment decisions effective immediately. However, there are additional requirements such as completing the Plan of Development, mitigation plans, and other informational requirements that the Grant Holders must meet before receiving permission to use the authorized area of public lands for the project. The BLM will grant permission to use these areas through its Notice to Proceed process (43 CFR 2805.10(a)(2)).

The BLM Decisions—Phased Decision: Due to the substantial interest expressed by local stakeholders and government officials in continuing to work toward a consensus route in Segments 8 and 9 of the Project, as well as questions raised regarding allowable actions under BLM policies and regulations for the Morley Nelson Snake River Birds of Prey National Conservation Area, the BLM has decided to postpone a decision on the routes and land use plan amendments associated with Segments 8 and 9 until further input can be gathered. The BLM will initiate siting discussions with cooperating agencies and stakeholders. At the conclusion of these discussions, the BLM will determine whether additional environmental analysis is required and prepare further environmental documentation, if needed. The public would be afforded an opportunity to review and comment on any potential supplemental environmental review document. The BLM would respond to public comments and provide its rationale on a decision for Segments 8 and 9 in a second ROD. The Proponents have demonstrated independent utility for Segments 1 through 7 of the Project, as well as Segment 10, which connects the Cedar Hill and Midpoint Substations just east of Segments 8 and 9.

BLM Decisions—Approved Segments: The ROD approves, with all mitigation measures identified in the ROD, a ROW grant for the following route alternatives for Segments 1 through 7 and Segment 10:

- Segment 1: Proposed 1W(a) and 1W(c) Routes
- Segment 2: Proposed Route
- Segment 3: Proposed Route, including Route 3A
- Segment 4: Revised Proposed Route, including a reroute east and north of the community of Cokeville
- Segment 5: Proposed Route, incorporating Alternatives 5B and 5E
- Segment 6: The proposed upgrade from 345 kV to 500 kV
- Segment 7: Proposed Route, incorporating Alternatives 7B, 7C, 7D, and 7G. The Proposed Route in the East Hills and Alternative 7G will be micro-sited to avoid Preliminary Priority Habitat for Greater Sage-Grouse.
- Segment 10: Proposed Route

BLM Decisions—Land Use Plan Amendments: The BLM planning regulations (43 CFR 1610.5–3) require authorized uses of public lands to conform to approved LUPs. The LUP amendments' preferred alternatives that were analyzed in the draft EIS associated with Segments 1 through 7 of the Project, as well as Segment 10, which connects the Cedar Hill and Midpoint Substations just east of Segments 8 and 9, were carried forward in the final EIS, with minor modifications made in preparing the approved LUP Amendments. The BLM received five protest letters on the Proposed LUP Amendments/Final EIS. The BLM Director denied all protest issues. The Director's Protest Resolution Report can be accessed at the following Web site: *http://www.blm.gov/wo/st/en/prog/planning/planning_overview/protest_resolution/protestreports.html*. To bring the Project into conformance, the ROD approves the following amendments to BLM resource management plans (RMP) in the Project area:

- Green River RMP: One amendment for visual resource management.
- Kemmerer RMP: Four amendments for visual resource management, National Historic Trails, and the Rock Creek/Tunp Special Management Area.

All plan amendments comply with applicable Federal laws and regulations and apply only to Federal lands and mineral estates administered by the BLM.

Appeal Information: A party may appeal the BLM's decision before the Interior Board of Land Appeals within 30 days of publication of this Notice of Availability in the **Federal Register** in accordance with the requirements of 43 CFR part 4, subpart E. BLM decisions issued under 43 CFR part 2800 are and remain in effect pending appeal (43 CFR 2801.10(b)). A party can file a petition for a stay of the decision pending appeal before the Interior Board of Land Appeals, but the stay petition must accompany the Notice of Appeal (43 CFR 2801.10; 43CFR 4.21). The appeal must be filed with the BLM Wyoming State Office at the above listed address. Please consult the appropriate regulations (43 CFR part 4, subpart E) and Appendix N of the ROD for further appeal requirements.

Authority: 40 CFR 1502.2 and 43 CFR 1610.5.

Donald A. Simpson,

Wyoming State Director.

[FR Doc. 2013–27261 Filed 11–13–13; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–13759; PX.PD00421E.00.1]

Draft General Management Plan/Wilderness Study/Environmental Impact Statement, Channel Islands National Park, Ventura and Santa Barbara Counties, California

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service announces the availability of a Draft General Management Plan (GMP)/Wilderness Study/Environmental Impact Statement (EIS) for Channel Islands National Park. The document identifies and analyzes three alternatives. *Alternative 1* (no action alternative) reflects current management direction and serves as a baseline for comparison with the other alternatives. Existing facilities, resource programs, and visitor opportunities would continue as they are. Currently the park is not designated as wilderness. *Alternative 2* emphasizes ecosystem preservation, restoration, and preservation of large expanses in relatively pristine resource conditions. Resource stewardship including ecosystem preservation and restoration, and preservation of natural landscapes, cultural landscapes, archeological resources, and historic structures would continue to be emphasized. Increased recreational opportunities would be provided for visitors to enjoy and appreciate the park. *Alternative 3* (agency-preferred) emphasizes resource stewardship, while also placing more attention on expanding education and recreational opportunities and accommodations to provide diverse visitor experiences on the islands. Both *Alternative 2* and *Alternative 3* propose 66,675 acres of the park be recommended to Congress for designation as wilderness, primarily on Santa Rosa and Santa Cruz islands.

DATES: All comments on the Draft EIS must be postmarked or transmitted not later than 60 days after the date the Environmental Protection Agency publishes notice of filing and release of the EIS in the **Federal Register**. The National Park Service will hold several public meetings during the comment period—the date, time, and location of the meetings will be announced on *http://parkplanning.nps.gov/chis,* in local and regional press media, and will also be available by contacting Channel Islands National Park.

ADDRESSES: Information will be available for public review and comment online at *http://parkplanning.nps.gov.chis,* and in the office of the Superintendent, Channel Islands National Park, 1901 Spinnaker Dr., Ventura, CA 93001, (805) 658–5702. You may submit comments by one of two methods: Mail or hand-deliver comments to Channel Islands National Park, Attn: DEIS—GMP/Wilderness Study (address above), or you may submit comments via the Web site noted above. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Mr. Russell Galipeau, Superintendent, Channel Islands National Park, 1901 Spinnaker Dr., Ventura, CA 93001; *russell_galipeau@nps.gov;* (805) 658–5702.

Mr. Greg Jarvis, Project Manager, NPS Denver Service Center, 12795 W. Alameda Parkway, Lakewood, CO 80228, (303) 969–2263.

SUPPLEMENTARY INFORMATION: The park includes five remote islands spanning 2,228 square miles of land and sea. Updating the park's 1995 general management plan (GMP) is needed to provide clear direction for resource preservation and visitor experience over the next 20 to 40 years. The updated GMP will provide a framework for proactive decision making, which will allow managers to effectively address future opportunities and problems, such as resource, operational, administrative, and visitor use issues facing the park. The updated GMP will serve as the basis for future detailed management documents, such as five-year strategic plans and implementation plans. In addition, the wilderness study component will determine if eligible portions of the park should be proposed for wilderness designation.

The following issues are the key topics addressed by the GMP/Wilderness Study:

- *Access to the islands.* Access across the sea to the islands is expensive and difficult. The islands are only accessible by park concessioner boats and planes or private boats. The issue this plan needs to answer is whether more opportunities for public access should be provided to the islands.
- *Access on Santa Rosa Island.* This issue addresses the question of the level and type of access that should be provided to visitors. Santa Rosa is a relatively large island. When most visitors are dropped off at Bechers Bay they are now faced with walking long distances to see the 53,000-acre island.
- *Type and level of recreation development that is appropriate on the islands.* This issue addresses the question of the appropriate balance of developments that should be provided for visitors (i.e., general types and intensities of development needed to provide for public enjoyment of the park, while minimizing impacts on park resources). The updated GMP will also address $14.5 million of deferred maintenance needs and will consider additional opportunities to provide commercial services to improve the visitor experience on the islands.
- *Providing sustainable park operations.* This issue focuses on whether existing administrative and operational facilities are functioning effectively and efficiently, and meeting the needs of both park staff and visitors. Managing aging, temporary employee housing on the islands is one key issue to resolve.
- *Designation of wilderness.* To fulfill the requirements of the park's enabling legislation and the Wilderness Act of 1964, the NPS must determine whether any lands in the park should be proposed for inclusion in the National Wilderness Preservation System.

Decision Process: Following due consideration of all comments received, a Final EIS will be prepared. As a delegated EIS, the official responsible for approval of the final GMP is the Regional Director, Pacific West Region. Subsequently the official responsible for implementing the approved GMP and for monitoring results is the Superintendent, Channel Islands National Park. In addition, the results of the wilderness study will be forwarded to the NPS Director for consideration, who then may forward to Secretary of the Interior, who may concur or revise the wilderness proposal, and in turn may forward the recommendation to Congress.

Dated: September 13, 2013.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 2013–27283 Filed 11–13–13; 8:45 am]

BILLING CODE 4312–FF–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–14338; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before October 19, 2013. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by November 29, 2013. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 25, 2013.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

CALIFORNIA

Los Angeles County

House at 1111 North Los Robles Avenue, (Residential Architecture of Pasadena: Influence of the Arts and Crafts Movement MPS) 1111 N. Los Robles Ave., Pasadena, 13000868

House at 1121 North Los Robles Avenue, (Residential Architecture of Pasadena: Influence of the Arts and Crafts Movement MPS) 1121–1123 N. Los Robles Ave., Pasadena, 13000869

COLORADO

El Paso County

Lindsey—Johnson—Vanderhoof House, 1130 N. Cascade Ave., Colorado Springs, 13000870

Garfield County

Nunns, John Herbert, House, 311 N. 7th St., Silt, 13000871

Morgan County

Antelope Springs Methodist Episcopal Church, Address Restricted, Snyder, 13000872

Phillips County

Hargreaves Homestead Rural Historic Landscape, US 385 between Cty. Rds. 10 & 12, Holyoke, 13000873

Millage Farm Rural Historic Landscape District, Cty. Rd. 18 between Cty. Rd. 37 & US 385, Holyoke, 13000874

FLORIDA

Collier County

Old Collier County Courthouse, 102 Copeland Ave. N., Everglades City, 13000875

GEORGIA

Fulton County

Capitol View Manor Historic District, Roughly bounded by Norfolk Southern RR, Hillside Dr. SW., I–75, Deckner Ave. SW. & Metropolitan Pkwy. SW., Atlanta, 13000876

Glynn County

Windsor Park Historic District, Bounded by Lanier Blvd., Walnut Ave., Gloucester & Magnolia Sts., Brunswick, 13000877

KANSAS

Gove County

Benson Culvert, (Masonry Arch Bridges of Kansas TR) 6 mi. S. & 9 mi. W. of Gove, Gove, 13000878

Jenkins Culvert, (Masonry Arch Bridges of Kansas TR) 6 mi. S. & 11.3 mi. W. of Gove, Gove, 13000879

Johnson County

Harmon Park Swale, (Santa Fe Trail MPS) 7700 Mission Rd., Prairie Village, 13000880

Sedgwick County

Linwood Place Historic District, (Residential Resources of Wichita, Sedgwick County, Kansas 1870–1957 MPS) Roughly S. Hydraulic, S. Kansas, S. Minneapolis, & S. Minnesota Aves., Stafford Ct., E. Hodson St., Wichita, 13000881

MINNESOTA

Crow Wing County

Garrison Concourse, (Federal Relief Construction in Minnesota MPS) Jct. of MN 169 & MN 18, Garrison, 13000882

Watonwan County

West Bridge, Adj. to Cty. Rd. 116 over Watonwan R., Madelia, 13000883

Winona County

Model School Building and College Hall of the Winona Normal School, 416 Washington & 151 W. Sanborn Sts., Winona, 13000884

MISSOURI

Jackson County

St. Regis Hotel, 1400–1402 E. Linwood Blvd., Kansas City, 13000885

NORTH DAKOTA

Bottineau County

Lesje Norwegian Evangelical Church, 519 107th St. NW., Roth, 13000886

RHODE ISLAND

Bristol County

Allen—West House, 153 George St., Barrington, 13000887

TEXAS

Fayette County

Bedstead Truss Bridge, (Historic Bridges of Texas MPS) .1 mi. NW. of jct. of Hillje & Kallus Sts., Schulenburg, 13000888

VIRGINIA

Franklin County

Ferrum College Historic District, 215 Ferrum Mountain Rd., Ferrum, 13000889

Powhatan County

Fighting Creek Plantation, 1811 Mill Quarter Rd., Powhatan, 13000890

Richmond Independent City, Chesapeake Warehouses, The, (Tobacco Warehouses in Richmond, Virginia, 1874–1963 MPS) 1100 Dinwiddie Ave., Richmond, 13000891

WYOMING

Carbon County

Powder Wash Archeological District, Address Restricted, Baggs, 13000892

A request for removal has been made for the following resource:

TEXAS

El Paso County

1800's Mexican Consulate, 612 E. San Antonio St., El Paso, 75001969

[FR Doc. 2013–27188 Filed 11–13–13; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA 104000]

Outer Continental Shelf (OCS), Alaska OCS Region, Chukchi Sea Planning Area, Proposed Oil and Gas Lease Sale 237 (Lease Sale 237)

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Comment Period Extension for a Call for Information and Nominations.

SUMMARY: This Notice informs readers that BOEM is extending the deadline for submitting responses to the Call for Information and Nominations (''Call'') for Chukchi Sea Oil and Gas Lease Sale 237. The Call was initially published as docket number 2013–23670 and amended docket number 2013–24053 with a November 18, 2013 comment deadline. Pursuant to this Notice, all responses to the Call must now be received no later than December 3, 2013. The Call is the initial step in the pre-lease process for Oil and Gas Lease Sale 237 in the Chukchi Sea Planning Area, tentatively scheduled to be held in 2016, as included in the OCS Oil and Gas Leasing Program 2012–2017. The purpose of the Call is to obtain nominations and information on oil and gas leasing, exploration, and development that might result from an OCS oil and gas lease sale for the Chukchi Sea Planning Area.

DATES: All responses to the Call must be received no later than December 3, 2013.

FOR FURTHER INFORMATION CONTACT: Michael S. Rolland, Chief, Leasing Section, BOEM, Alaska OCS Region, 3801 Centerpoint Drive, Ste. 500, Anchorage, AK 99503–5823, or at (907) 334–5271.

SUPPLEMENTARY INFORMATION:

As published in the **Federal Register** on September 27, 2013 (78 FR 59715), and amended on October 2, 2013 (78 FR 60892), the Call's submission deadline was November 18, 2013. Pursuant to this Notice, the Call's submission deadline is being extended to December 3, 2013, due to the government shutdown between October 1 and October 16, 2013. During the government shutdown, information cited in the Call may have been unavailable to the public on the BOEM Web site. BOEM staff were also not available to respond to inquiries regarding the Call. In addition, the government shutdown delayed continued consultation with other Federal agencies. For the reasons cited above, the comment period deadline in the Call notices published on September 27, 2013 (78 FR 59715), and amended on October 2, 2013 (78 FR 60892), are hereby updated to reflect a new December 3, 2013 comment period deadline. All other information and procedures identified in those Call notices, including the methods for submission of responses and nominations, remain in effect.

Dated: November 8, 2013.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2013–27308 Filed 11–13–13; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1SS08011000SX066A00067F134S180110; S2D2SS08011000SX066A00033F13XS501520]

Action Subject to Intergovernmental Review

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement, are notifying the public that we intend to grant funds to eligible applicants for purposes authorized under the Abandoned Mine Land (AML) Reclamation Program. Additionally, we are notifying the public that we intend to grant funds to eligible applicants for regulating coal mining within their jurisdictional borders. We will award these grants during fiscal year 2014.

DATES: A state single point of contact and other interested state or local entities may submit written comments regarding AML and regulatory funding by December 31, 2013.

ADDRESSES: You may submit comments by any of the following methods:

- *Electronic Mail:* Send your comments to *jbautista@osmre.gov.*
- *Mail, Hand-Delivery, or Courier:* Send your comments to Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 203–SIB, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Jay Bautista, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., MS 130–SIB, Washington, DC 20240; Telephone (202) 208–7411.

SUPPLEMENTARY INFORMATION:

Grant Notification

We are notifying the public that we intend to grant funds to eligible applicants for purposes authorized under the Abandoned Mine Land (AML) Reclamation Program. Additionally, we are notifying the public that we intend to grant funds to eligible applicants for regulating coal mining within their jurisdictional borders. We will award these grants during fiscal year 2014. Eligible applicants are those states and tribes with a regulatory program or reclamation plan approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.,* and the State of Tennessee. Under Executive Order (E.O.) 12372, we must provide state and tribal officials the opportunity to review and comment on proposed federal financial assistance activities. Of the eligible applicants, twenty states and tribes do not have single points-of-contact under the E.O. 12372 review process; therefore, we are required to publish this notice as an alternate means of notification.

Description of the AML Program

SMCRA established the Abandoned Mine Reclamation Fund to receive the AML fees used to finance reclamation of AML coal mine sites. Grants to eligible states and tribes are funded from permanent (mandatory) appropriations. Recipients use these funds to reclaim the highest priority AML coal mine sites that were left abandoned prior to the enactment of SMCRA in 1977, eligible non-coal sites, and for non-reclamation projects.

Description of the Regulatory Program

Title VII of SMCRA authorizes us to provide grants to states and Indian tribes to develop, administer, and enforce state regulatory programs addressing surface coal mining operations. Title V and Title VII authorize states and tribes to develop regulatory programs pursuant to SMCRA, and upon approval of the regulatory program, to assume regulatory primacy and act as the regulatory authority responsible for administering and enforcing the approved SMCRA regulatory program. Our regulations at 30 CFR Chapter VII implement the provisions of SMCRA.

Dated: October 24, 2013.

Joseph G. Pizarchik,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 2013–27228 Filed 11–13–13; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1114 (Review)]

Steel Nails From China; Scheduling of an Expedited Five-Year Review Concerning the Antidumping Duty Order on Steel Nails From China

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on steel nails from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: Effective Date: October 21, 2013.

FOR FURTHER INFORMATION CONTACT: Michael Szustakowski (202–205–3169), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On October 21, 2013, the Commission determined that the domestic interested party group response to its notice of institution (78 FR 40172, July 3, 2013) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.[2]

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on November 20, 2013, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before November 26, 2013, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by November 26, 2013. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] Commissioner F. Scott Kieff did not participate in this vote.

[3] The Commission has found the response submitted by Mid Continent Nail Co., Poplar Bluff, MO, to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (October 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B) because this review is ''extraordinarily complicated'' pursuant to 19. U.S.C. 1675 (c)(5)(C)(ii).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: November 7, 2013.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–27209 Filed 11–13–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–450 and 731–TA–1122 (Review)]

Laminated Woven Sacks From China; Scheduling of Expedited Five-Year Reviews Concerning the Countervailing Duty and Antidumping Duty Orders on Laminated Woven Sacks From China

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on laminated woven sacks from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* October 21, 2013.

FOR FURTHER INFORMATION CONTACT: Michael Haberstroh (202–205–3265), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On October 21, 2013, the Commission determined that the domestic interested party group response to its notice of institution (78 F.R. 39319, July 1, 2013) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.[2]

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on February 7, 2014, and made available to persons on the Administrative Protective Order service list for the reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before February 14, 2014, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by February 14, 2014. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 F.R. 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B) because these reviews are ''extraordinarily complicated'' pursuant to 19. U.S.C. § 1675 (c)(5)(C)(iii).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 7, 2013.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–27211 Filed 11–13–13; 8:45 am]

BILLING CODE 7020–02–P

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[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] Commissioner F. Scott Kieff did not participate in this vote.

[3] The Commission has found the responses submitted by Coating Excellence International, LLC, Exopack Holding Corp., Graphic Packaging International, Inc., Hood Packaging Corp., Polytex Fibers Corp., and Seatac Packaging Manufacturing Corp. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–453 and 731–TA–1136–1137 (Review)]

Sodium Nitrite From China And Germany; Scheduling of Expedited Five-Year Reviews Concerning the Countervailing Duty Order and Antidumping Duty Order on Sodium Nitrite From China and the Antidumping Duty Order on Sodium Nitrite From Germany

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on sodium nitrite from China and the antidumping duty order on sodium nitrite from Germany would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* October 21, 2013.

FOR FURTHER INFORMATION CONTACT: Samuel Brecker (202–205–2388), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On October 21, 2013, the Commission determined that the domestic interested party group response to its notice of institution (78 FR 39316, July 1, 2013) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.[2]

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on December 2, 2013, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commissions rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before December 9, 2013 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by December 9, 2013. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (October 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the reviews period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B) because these reviews are ''extraordinarily complicated'' pursuant to 19. U.S.C. 1675(c)(5)(C)(iv).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: November 7, 2013.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–27210 Filed 11–13–13; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any Individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] Commissioner F. Scott Kieff did not participate in this vote.

[3] The Commission has found the responses submitted by General Chemical LLC to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–990 (Second Review)]

Non-Malleable Cast Iron Pipe Fittings From China; Scheduling of an Expedited Five-Year Review Concerning the Antidumping Duty Order on Non-Malleable Cast Iron Pipe Fittings From China

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on non-malleable cast iron pipe fittings from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* October 21, 2013.

FOR FURTHER INFORMATION CONTACT: Donald Thibeau (202–205–2388), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On October 21, 2013, the Commission determined that the domestic interested party group response to its notice of institution (78 FR 39321, July 1, 2013) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.[2]

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on December 2, 2013, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before December 9, 2013 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by December 9, 2013. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (October 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B) because this review is ''extraordinarily complicated'' pursuant to 19. U.S.C. 1675 (c)(5)(C)(ii).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: November 7, 2013.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–27212 Filed 11–13–13; 8:45 am]

BILLING CODE 7020–02–P

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[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] Commissioner F. Scott Kieff did not participate in this vote.

[3] The Commission has found the responses submitted by Anvil, LP and Ward Manufacturing, LLC to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–899]

Certain Vision-Based Driver Assistance System Cameras and Components Thereof; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 20, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of TRW Automotive U.S. LLC of Livonia, Michigan. A supplement to the complaint was filed on October 17, 2013. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain vision-based driver assistance system cameras and components thereof by reason of infringement of certain claims of U.S. Patent No. 6,807,287 (''the '287 patent''), and that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2013).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 6, 2013, *ordered that*–

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after

importation of certain vision-based driver assistance system cameras and components thereof by reason of infringement of one or more of claims 1, 2, 3, and 8 of the '287 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: TRW Automotive U.S. LLC, 12001 Tech Center Drive, Livonia, MI 48150.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Magna Electronics, Inc., 601 Abbot Road, East Lansing, MI 48823.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: November 7, 2013.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–27208 Filed 11–13–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–13–030]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission

TIME AND DATE: November 15, 2013 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none
2. Minutes
3. Ratification List
4. Vote in Inv. Nos. 701–TA–503–504 and 731–TA–1229–1230 (Preliminary) (Monosodium Glutamate from China and Indonesia). The Commission is currently scheduled to complete and file its determinations on or before November 18, 2013; Commissioners' opinions will be issued on November 25, 2013.
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier notification of this meeting was not possible.

By order of the Commission:

Issued: November 7, 2013.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–27361 Filed 11–12–13; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On November 6, 2013, the United States Department of Justice lodged a proposed Operable Unit Three Consent Decree (''Decree'') with the United States District Court for the District of New Jersey in the lawsuit entitled *United States* v. *Air Products and Chemicals, Inc., et al.,* Civil Action No. 13–6695 (CCC) (MF).

The proposed consent decree provides for the performance of a remedial action, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.,* selected by the United States Environmental Protection Agency for Operable Unit Three (''OU 3'') at the Scientific Chemical Processing (''SCP'') Superfund Site in Carlstadt, Bergen County, New Jersey.

The OU 3 remedial action for the SCP Carlstadt site will be performed by a group of Settling Defendants, consisting of Air Products and Chemicals, Inc., Akzo Nobel Coatings, Inc., Alcatel-Lucent USA Inc., ARKEMA Inc., Ashland Inc., Avantor Performance Materials, Inc., Avery Dennison Corporation, BASF Corporation, Benjamin Moore & Co., Ber Mar Manufacturing Corp., Bristol-Myers Squibb Company, Browning-Ferris Industries of New Jersey, Inc., CBS Corporation, Chemcoat Inc., CNA Holdings LLC, Continental Holdings Inc., Cycle Chem, Inc., Cytec Industries, Inc., Dri-Print Foils, Inc., E. I. du Pont de Nemours and Company, Exxon Mobil Corporation/ExxonMobil Oil Corporation, General Electric Company, GlaxoSmithKline, LLC, Goodrich Corporation, HCR ManorCare, Inc., Hoffmann-La Roche, Inc., Honeywell International Inc., John L. Armitage & Co., Johnson & Johnson, Kirker Enterprises, Inc., L.E. Carpenter & Company, LANXESS Corporation, Mack Trucks, Inc., Merck & Co., Inc., Momentive Specialty Chemicals Inc., Nepera, Inc., New England Laminates Co., Inc., Northrop Grumman Systems Corporation, Occidental Chemical Corporation, Pan Technology, Inc., Permacel, Pfizer Inc, Pharmacia LLC, Revlon Consumer Products Corporation, Rohm and Haas Company, Seagrave Coatings Corp. (NJ), SI Group, Inc., Siegfried (USA), Inc., Simon Wrecking Company, Inc./Simon Resources, Inc./Mid State Trading Co., The Dow Chemical Company, The Warner Lambert Co., LLC, 3M Company, Trane U.S., Inc., Union Carbide Corporation, United Technologies Corporation, and Veolia ES Technical Solutions, L.L.C. The proposed consent decree also requires the defendants to pay $50,000 for reimbursement of EPA past costs at the site.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Air Products and Chemicals, Inc., et al.,* D.J. Ref. No. 90–

11–2–495/2. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $48.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the appendices and signature pages, the cost is $12.25.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–27197 Filed 11–13–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0023]

Overhead and Gantry Cranes; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Standard on Overhead and Gantry Cranes (29 CFR 1910.179).

DATES: Comments must be submitted (postmarked, sent, or received) by January 13, 2014.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0023, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2010–0023) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The paperwork provisions of the Standard on Overhead and Gantry Cranes specify requirements for: Marking the rated load of cranes; and preparing certification records to verify the inspection of the crane hooks, hoist chains, and rope; preparing reports of rated load tests for repaired hooks or modified cranes. Records and reports must be maintained and disclosed upon request.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that it retain its previous estimate of 321,380 burden hours. This is a result of no new information on the number of overhead and gantry cranes in use.

Type of Review: Extension of a currently approved collection.

Title: Overhead and Gantry Cranes (29 CFR 1910.179).

OMB Control Number: 1218–0224.

Affected Public: Business or other for-profits.

Number of Respondents: 31,495.

Frequency of Responses: On occasion; monthly; semi-annually.

Average Time per Response: Varies from 5 minutes (.08 hour) to disclose certification records to 2 hours to obtain and post rated load information on cranes.

Estimated Total Burden Hours: 321,380.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0023). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov*.

Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on November 8, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–27237 Filed 11–13–13; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Amended Notice

On November 5, 2013, the Legal Services Corporation (''LSC'' or ''Corporation'') issued a public announcement that the Institutional Advancement Committee will meet telephonically on November 22, 2013, at 2:30 p.m., Eastern Standard Time (''e.s.t.''). This announcement was published in the **Federal Register** on November 8, 2013, at 78 FR 67201. This announcement amends the November 5th public announcement, as published in the **Federal Register** on November 8th, by providing call-in directions for the open session portion of the meeting and notifying the public that on November 6, 2013 the Board of Directors (''Board'') voted and authorized closing a portion of the meeting to the public to discuss prospective funders for LSC's 40th anniversary celebration and development activities and prospective members for LSC's 40th campaign cabinet and honorary committee. There are no other changes to the notice.

DATE AND TIME: The Legal Services Corporation's Institutional Advancement Committee will meet telephonically on November 22, 2013. The meeting will commence at 2:30 p.m., e.s.t., and will continue until the conclusion of the Committee's agenda.

LOCATION: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL-IN DIRECTIONS FOR OPEN SESSION:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 59077073 48.
- When connected to the call, please immediately ''MUTE'' your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the presiding Chair may solicit comments from the public.

STATUS OF MEETING: On November 6, 2013, the Board of Directors voted and authorized closing a portion of the meeting to the public to discuss prospective funders for LSC's 40th anniversary celebration and development activities and prospective members for LSC's 40th campaign cabinet and honorary committee.

A verbatim transcript will be made of the closed session meeting of the Institutional Advancement Committee. The transcript of any portion of the closed session falling within the relevant provision of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6) will not be available for public inspection. A copy of the General Counsel's Certification that, in his opinion, the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED

OPEN

1. Approval of Agenda.
2. Approval of minutes of the Committee's open session meeting of October 1, 2013.
3. Approval of minutes of the Committee's open session meeting of October 20, 2013.
4. Update on development campaign.
5. Public Comment.
6. Consider and act on other business.

CLOSED

7. Approval of minutes of the Committee's closed session meeting of October 1, 2013.
8. Approval of minutes of the Committee's closed session meeting of October 20, 2013,

9. Discussion of prospective funders for LSC's 40th anniversary celebration and development activities.

10. Discussion of prospective members for LSC's 40th Campaign Cabinet and Honorary Committees.

11. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: November 12, 2013.

Atitaya C. Rok,

Staff Attorney.

[FR Doc. 2013–27425 Filed 11–12–13; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Advisory Committee on International Exhibitions Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that one meeting of the Federal Advisory Committee on International Exhibitions (FACIE) will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC, 20506 as follows (ending time is approximate): FACIE (application review): In Room 627. This meeting will be virtual and will be closed.

DATES: November 20, 2013; 2:00 p.m. to 5:00 p.m. Eastern time.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506; *plowitzk@arts.gov* or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Dated: November 8, 2013.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2013–27251 Filed 11–13–13; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Renew an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and Request for Comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(2)(A) of the Paperwork reduction Act of 1955 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection with changes for no longer than three (3) years.

DATES: Written comments on this notice must be received by January 13, 2014 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology.

For Additional Information or Comments: The document will be available on the NSF's Division of Polar Programs' home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, NSF cautions you against including any personally identifying information in reference to this information collection, NSF Form 1700. Contact Suzanne Plimpton, the NSF Reports Clearance Officer, phone (703) 292–7556, or via email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Medical Clearance Process for Deployment to Antarctica.

OMB Number: 3145–0177.

Expiration Date of Approval: April 30, 2014.

Type of Request: Intent to seek approval to renew with changes an information collection for three years.

Abstract

Proposed Project: Presidential Memorandum No. 6646 (February 5, 1982) (available from the National Science Foundation, Division of Polar Programs, Suite 755, 4201 Wilson Boulevard, Arlington, VA 22230) sets forth the National Science Foundation's overall management responsibilities for the entire United States national program in Antarctica. Section 107(a) of Public Law 98–373 [July 31, 1984; amended as Public Law 101–609—November 16, 1990] [available from the National Science Foundation, Division of Polar Programs, Suite 755, 4201 Wilson Boulevard, Arlington, VA 22230] designates the National Science Foundation as the lead agency responsible for implementing Arctic research policy, and the Director of the National Science Foundation shall ensure that the requirements of section 108 are fulfilled.

NSF Form 1700, Medical Clearance Process for Deployment to the Polar Regions (**Note:** This form replaces NSF Forms 1421, 1422, 1423, 1424, 1425, 1427, 1428, 1429 and the title removes

''Antarctica'' and inserts ''the Polar Regions'') furnishes information to the NSF regarding the physical, dental, and mental status for all individuals (except uniformed service personnel) who anticipate deploying to Antarctica under the auspices of the United States Antarctic Program or to certain regions of the Arctic sponsored by the NSF/GEO/Division of Polar Programs. The information is used to determine whether an individual is physically and mentally suited to endure the extreme hardships imposed by the Arctic and Antarctic continents, while also performing specific duties as specified by their employers.

Respondents: All non-uniformed personnel planning to deploy to U.S. stations in the Antarctic or to specified regions of the Arctic that are sponsored by the National Science Foundation's Division of Polar Programs.

The number of annual respondents: 3,200 to the Antarctic and 100 to the Arctic.

Estimated Total Annual Burden on Respondents: 33,000 hours.

Frequency of Responses: This form is submitted upon an individual's first deployment to Antarctica (below 60° South) or to specified regions of the Arctic and annually thereafter for the duration of the individual's deployments.

Dated: November 8, 2013.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2013–27257 Filed 11–13–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board

The National Science Board's *ad hoc* Committee on Honorary Awards, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a meeting for the transaction of National Science Board business, as follows:

Date and Time: Monday, November 18, 2013 at 11:00 a.m. EST.

Subject Matter: Consideration of nominations for honorary awards.

Status: Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230.

Please refer to the National Science Board Web site (*www.nsf.gov/nsb*) for information or schedule updates, or contact: Nadine Lymn, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Bushmiller,

NSB Senior Legal Counsel.

[FR Doc. 2013–27199 Filed 11–13–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board's Task Force on Administrative Burdens, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference for the transaction of National Science Board business and other matters specified, as follows:

DATE & TIME: Wednesday, December 11, 2013, 6:00 p.m.–7:00 p.m. e.s.t.

SUBJECT MATTER: A discussion of the results of the Task Force's Request for Information, comment from agencies and organizations, and the content and timeline of the final report and recommendations.

STATUS: Open

This meeting will be held by teleconference. A public listening line will be available. Members of the public must contact the Board Office [call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*] at least 24 hours prior to the teleconference for the public listening number. Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) which may be found at *http://www.nsf.gov/nsb/notices.* Point of contact for this meeting is Lisa Nichols or John Veysey.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2013–27384 Filed 11–12–13; 4:15 pm]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70826; File No. SR–ICC–2013–08]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change to Add Rules Related to the Clearing of MCDX Index CDS Contracts and Make Conforming Changes to Existing Rules

November 7, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 25, 2013, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to adopt new rules that will provide the basis for ICC to clear additional credit default swap contracts. Specifically, ICC is proposing to amend Chapter 26 of its rules to add Section 26H to provide for the clearance of the MCDX Untranched Contracts (''MCDX Contracts''). MCDX Contracts are credit default swap (''CDS'') contracts that reference an index of municipal issuers.

As discussed in more detail in Item II.A below, Section 26H (MCDX Untranched Contracts) provides for the definitions and certain specific contract terms for cleared MCDX Contracts. Conforming changes are also made to the definition of ''CDS Restructuring Rules'' in Chapter 20 (Credit Default Swaps) and to Rule 2101–02(a)(iii) (Role of the Regional CDS Committees) to clarify cross-references to the CDS Restructuring Rules set forth in Section 26E of the Rules. Section 26E (CDS Restructuring Rules) is modified to provide that it will not apply to MCDX Contracts (as such contracts are automatically triggered in the event of a restructuring credit event, as discussed below).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ICC has identified MCDX Contracts as a product that has become increasingly important for market participants to manage risk and express views with respect to municipal issuer credit. ICC's clearance of MCDX Contracts will facilitate the prompt and accurate settlement of swaps and contribute to the safeguarding of securities and funds associated with swap transactions.

MCDX Contracts have similar terms to the CDX North American Index CDS contracts (''CDX.NA Contracts'') currently cleared by ICC and governed by Section 26A of the ICC rules. Accordingly, the proposed rules found in Section 26H largely mirror the ICC rules for CDX.NA Contracts in Section 26A, with certain modifications that reflect the underlying reference entities (municipal issuer reference entities instead of corporate reference entities) and differences in terms and market conventions between MCDX Contracts and CDX.NA Contracts.

The MCDX Contracts reference the MCDX Index, the current series of which consists of 50 municipal issuers. MCDX Contracts, consistent with market convention and widely used standard terms documentation, can be triggered by credit events for failure to pay or restructuring (by contrast to the credit events of failure to pay and bankruptcy applicable to the CDX.NA Contracts). In the event of a restructuring, all outstanding positions are automatically triggered. Thus, from a clearing perspective, restructuring credit events would be handled in the same way as a failure to pay credit event (and would not require the additional restructuring triggering procedures that are used for certain corporate and sovereign CDS contracts). MCDX Contracts will only be denominated in U.S. dollars.

Rule 26H–102 (Definitions) sets forth the definitions used for the MCDX Contract Rules. An ''Eligible MCDX Untranched Index'' is defined as ''each particular series and version of a MCDX index or sub-index, as published by the MCDX Untranched Publisher, determined by ICE Clear Credit to be eligible and included in the List of Eligible MCDX Untranched Indexes.'' ''MCDX Untranched Terms Supplement'' refers to the market standard form of documentation used for credit default swaps on the MCDX index, which is incorporated by reference into the contract specifications in Section 26H. The remaining definitions are substantially the same as the definitions found in ICC Section 26A, other than certain conforming changes.

Rules 26H–309 (Acceptance of MCDX Untranched Contracts by ICE Clear Credit), 26H–315 (Terms of the Cleared MCDX Untranched Contract), and 26H–316 (Updating Index Version of Fungible Contracts After a Credit Event or a Succession Event; Updating Relevant Untranched Standard Terms Supplement) reflect or incorporate the basic contract specifications for MCDX Contracts and are substantially the same as under ICC Section 26A for CDX.NA Contracts. In addition to various non-substantive conforming changes, proposed Rule 26H–317 (Terms of MCDX Untranched Contracts) differs from the corresponding Rule 26A–317 to reflect the fact that restructuring is a credit event for the MCDX Contract. (CDX.NA Contracts currently cleared by ICC do not use the restructuring credit event. However, unlike the case with other corporate and sovereign CDS, in the event of a restructuring for an MCDX reference entity, all outstanding positions are automatically triggered. Thus, from a clearing perspective MCDX restructuring events would be handled in the same way as a failure to pay.)

Because of the automatic triggering following a restructuring credit event, the provisions of Section 26E of the Rules are not necessary for MCDX Contracts, and Section 26E is amended to provide that it does not apply to MCDX Contracts. A conforming change is made to the definition of ''CDS Restructuring Rules'' in Chapter 20 (Credit Default Swaps) to make reference to the rules set forth in Section 26E (CDS Restructuring Rules) of the Rules. In addition, Rule 2101–02(a)(iii) (Role of the Regional CDS Committees) is modified to make reference to the CDS Restructuring Rules set forth in Section 26E of the Rules.

Section 17(A)(b)(3)(F) of the Act [3] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F), because ICC believes that the clearance of MCDX Contracts will facilitate the prompt and accurate settlement of securities and contribute to the safeguarding of securities and funds associated with swap transactions in ICC's custody or control, or for which ICC is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

MCDX Contracts will be available to all ICC Participants for clearing. The clearing of MCDX Contracts by ICC does not preclude the offering of MCDX Contracts for clearing by other market participants. In addition, ICC does not anticipate that accepting MCDX Contracts for clearing will have any adverse effect on the trading market for the contract. Therefore, ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

ICC has consulted with its Participants and non-member market participants concerning the proposed rule change. Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change or

[3] 15 U.S.C. 78q–1(b)(3)(F).

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2013–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICC–2013–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m.

Copies of such filings also will be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/notices/Notices.shtml?regulatoryFilings.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2013–08 and should be submitted on or before December 5, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–27201 Filed 11–13–13; 8:45 am]

BILLING CODE 8011–01–P

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70829; File No. SR–NASDAQ–2013–122]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change To List and Trade Shares of the First Trust High Income Fund of First Trust Exchange-Traded Fund VI

November 7, 2013.

I. Introduction

On September 12, 2013, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the First Trust High Income ETF ("Fund") under Nasdaq Rule 5735. The proposed rule change was published for comment in the **Federal Register** on September 26, 2013.[3] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by First Trust Exchange-Traded Fund VI ("Trust"). The Trust is registered with the Commission as an investment company.[4] The Fund is a series of the Trust.

First Trust Advisors L.P. will be the investment adviser ("Adviser") to the Fund. First Trust Portfolios L.P. ("Distributor") will be the principal underwriter and distributor of the Fund's Shares. Brown Brothers Harriman & Co. will act as the administrator, accounting agent, custodian and transfer agent to the Fund.

The Exchange represents that the Adviser is not a broker-dealer, but is affiliated with the Distributor, a broker-dealer, and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.[5] The Exchange represents that the Shares will be subject to Nasdaq Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.[6] The Exchange represents that for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 under the Act.[7]

Principal Investments

The Fund's primary investment objective is to provide current income and its secondary investment objective is to provide capital appreciation. The Fund will pursue its objectives by investing in large-cap U.S. exchange-traded equity securities and by utilizing an options strategy consisting of writing (selling) U.S. exchange-traded covered call options on the Standard & Poor's 500 Index ("Index").

In pursuing its investment objectives, under normal market conditions,[8] the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70460 (Sept. 20, 2013), 78 FR 59402 (Sept. 26, 2013) ("Notice").

[4] The Trust has filed a registration statement on Form N–1A ("Registration Statement") with the Commission. *See* Post-Effective Amendment No. 3 to Registration Statement on Form N–1A for the Trust, dated Jan. 16, 2013 (File Nos. 333–182308 and 811–22717). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 ("1940 Act"). *See* Investment Company Act Release No. 28468 (Oct. 27, 2008) (File No. 812–13477).

[5] *See* Notice *supra* note 3, 78 FR at 59403. The Exchange states that in the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. *See id.*

[6] *See id.* at 59407.

[7] *See* 17 CFR 240.10A–3. *See also* Notice, *supra* note 3, 78 FR at 59407.

[8] The term "under normal market conditions" includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the securities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. In periods of extreme market disturbance, the Fund may take temporary defensive positions, by overweighting its

Fund will invest primarily in large-cap U.S. exchange-traded equity securities. The Fund will also employ an options strategy in which it will write U.S. exchange-traded covered call options on the Index in order to seek additional cash flow in the form of premiums on the options that may be distributed to shareholders on a monthly basis. The market value of the options strategy may be up to 20% of the Fund's overall net asset value.

The equity securities in which the Fund will invest and the options that the Fund will write will be limited to U.S. exchange-traded securities and options, respectively, that trade in markets that are members of the Intermarket Surveillance Group (''ISG'') or are parties to a comprehensive surveillance sharing agreement with the Exchange.[9]

The equity securities held by the Fund will be selected using a mathematical optimization process which attempts to tilt the Fund's common stock portfolio toward higher dividend paying stocks. The equity securities held by the Fund may include non-U.S. securities that are listed on a U.S. securities exchange in the form of American Depositary Receipts (''ADRs'') and Global Depositary Receipts (''GDRs,'' and together with ADRs, ''Depositary Receipts''). The equity securities will be periodically rebalanced.

The options portion of the portfolio will generally consist of U.S. exchange-traded covered calls or covered call spreads on the Index written by the Fund. The call options written by the Fund will typically be a laddered portfolio of one week, one month, two months, and three months, and will typically be written at-the-money to slightly out-of-the-money. A call option will give the holder the right to buy the Index at a predetermined strike price from the Fund. The notional value of calls written (including calls and call spreads written on the Index and/or other indexes as described in Other Investments below) will generally be between 25% and 75% of the overall Fund.

Other Investments

In addition to the options strategy described in Principal Investments above, the Fund may invest up to 10% of the market value of its net assets in futures, options, options on futures, total return swaps, credit default swaps, and forward contracts.[10] The Fund may utilize such derivatives to enhance return, to hedge some of the risks of its investments in securities, as a substitute for a position in the underlying asset, to reduce transaction costs, to maintain full market exposure (which means to adjust the characteristics of its investments to more closely approximate those of the markets in which it invests), to manage cash flows, or to preserve capital. In attempting to enhance returns and/or hedge risks, the Fund may buy and/or write U.S. exchange-traded options on single stocks included in the portfolio, on the Index, and/or on other equity indexes. The Fund may also write covered call spreads on the Index and/or other equity indexes.

Under normal market conditions, the Fund may invest up to 10% of its net assets in short-term debt securities and cash equivalents, or it may hold cash. The percentage of the Fund's net assets invested in such holdings will vary and will depend on several factors, including market conditions.

For temporary defensive purposes and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies and invest part or all of its assets in short-term debt securities or cash equivalents or it may hold cash. During such periods, the Fund may not be able to achieve its investment objectives. The Fund may adopt a defensive strategy when the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances. The use of temporary investments will not be a part of a principal investment strategy of the Fund.

Short-term debt securities are securities from issuers having a long-term debt rating of at least A by Standard & Poor's Ratings Group (''S&P Ratings''), Moody's Investors Service, Inc. (''Moody's''), or Fitch, Inc. (''Fitch''), and having a maturity of one year or less. Short-term debt securities are defined to include, without limitation, the following: (1) U.S. government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (4) repurchase agreements,[11] which involve purchases of debt securities; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; and (6) commercial paper, which is short-term unsecured promissory notes. The Fund may only invest in commercial paper rated A–1 or higher by S&P Ratings, Prime-1 or higher by Moody's, or F2 or higher by Fitch.

The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction does not apply to obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities, or securities of other investment companies.

The Fund's investments will be consistent with the Fund's investment objectives and will not be used to enhance leverage.

Additional information regarding the Trust, Fund, and Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes, calculation of net asset value per share (''NAV''), availability of information, trading rules

portfolio in cash/cash-like instruments; however, to the extent possible, the Adviser would continue to seek to achieve the Fund's investment objectives.

[9] A list of ISG members is available at *www.isgportal.org.*

[10] To the extent practicable, the Fund will invest in swaps cleared through the facilities of a centralized clearing house.

[11] The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust. The Adviser will review and monitor the creditworthiness of such institutions. The Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

and halts, and surveillance procedures, among other things, can be found in the Notice or the Registration Statement, as applicable.[12]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [13] and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[15] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[16] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares and any underlying exchange-traded products.[17] In addition, the Intraday Indicative Value (as defined in Nasdaq Rule 5735(c)(3)) will be based upon the current value of the components of the Disclosed Portfolio (as defined in Nasdaq Rule 5735(c)(2)), will be available on the NASDAQ OMX Information LLC proprietary index data service,[18] and will be updated and widely disseminated and broadly displayed at least every 15 seconds during the Regular Market Session.[19] On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, which will form the basis for the Fund's calculation of NAV at the end of the business day.[20] The NAV of the Fund will be determined once each business day, normally as of the close of trading on the New York Stock Exchange (normally 4:00 p.m. Eastern time).[21] Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.[22] Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.[23] Intra-day, executable price quotations for the securities and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable.[24] Intra-day price information will also be available through subscription services, such as Bloomberg, Markit, and Thomson Reuters, which can be accessed by authorized participants and other investors.[25] The Distributor's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.[26]

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[27] In addition, a basket composition file, which includes the security names, amounts and share quantities, as applicable, required to be delivered in exchange for one Creation Unit of the Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of Nasdaq via the National Securities Clearing Corporation.[28] Further, trading in the Shares will be subject to Nasdaq 5735(d)(2)(D), which sets forth circumstances under which trading in the Shares of the Fund may be halted.[29] The Exchange may halt trading in the Shares if trading is not occurring in the securities or the financial instruments constituting the Disclosed Portfolio of the Fund or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[30] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[31] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.[32] The Exchange also states that the Adviser is affiliated with a broker-dealer and has implemented a firewall with respect to its broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio.[33] The Exchange states that the

[12] *See* Notice and Registration Statement, *supra* notes 3 and 4, respectively.

[13] 15 U.S.C. 78f.

[14] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[17] *See* Notice, *supra* note 3, 78 FR at 59407.

[18] According to the Exchange, the NASDAQ OMX Global Index Data Service is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for exchange-traded funds. *See id.* at 59406.

[19] *See id.*

[20] On a daily basis, the Disclosed Portfolio will include for each portfolio security and other financial instrument of the Fund the following information: Ticker symbol (if applicable), name of security and financial instrument, number of shares (if applicable) and dollar value of securities and financial instruments held by the Fund, and percentage weighting of the security and financial instrument in the Fund. The Web site information will be publicly available at no charge. *See id.*

[21] *See id.* at 59404.

[22] *See id.* at 50407.

[23] *See id.*

[24] *See id.* at 59408.

[25] *See id.*

[26] *See id.*

[27] *See id.*

[28] *See id.* at 59406–7.

[29] *See id.* at 59407.

[30] *See id. See also* 5735(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt or pause trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. *See* Notice, *supra* note 3, 78 FR at 59407.

[31] *See* Nasdaq Rule 5735(d)(2)(B)(ii).

[32] *See* Notice, *supra* note 3, 78 FR at 59407.

[33] *See supra* note 5 and accompanying text. An investment adviser to an open-end fund is required

Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, will communicate as needed regarding trading in the Shares, in the equity securities in which the Fund will invest, and in the U.S. exchange-traded options that the Fund will buy and write, with other markets and other entities that are members of the ISG, and that FINRA may obtain trading information regarding trading in the Shares and in such equity securities and U.S. exchange-traded options from such markets and other entities.[34] In addition, the Exchange may obtain information regarding trading in the Shares and in such equity securities and U.S. exchange-traded options from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[35]

The Exchange further represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.[36] In support of this proposal, the Exchange has made representations, including:

(1) The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and continued listing, the Fund must be in compliance with Rule 10A–3 under the Exchange Act.[37]

(6) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

(7) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment); will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained; and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities.

(8) The equity securities in which the Fund will invest and the options that the Fund will write will be limited to U.S. exchange-traded securities and options, respectively, that trade in markets that are members of the ISG, which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.

(9) Under normal market conditions, the Fund will invest primarily in large-cap U.S. exchange-traded equity securities. The Fund will also utilize an options strategy in which it will write U.S. exchange-traded covered call options on the Index. The market value of the options strategy may be up to 20% of the Fund's overall net asset value.

(10) In addition to the options strategy that is part of the Fund's principal investment strategy, the Fund may invest up to 10% of the market value of its net assets in futures, options, options on futures, total return swaps, credit default swaps, and forward contracts. To the extent practicable, the Fund will invest in swaps cleared through the facilities of a centralized clearing house.

(11) The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[38] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[39] that the proposed rule change (SR–NASDAQ–2013–122) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–27204 Filed 11–13–13; 8:45 am]

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to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[34] *See* Notice, *supra* note 3, 78 FR at 59407.

[35] *See id.*

[36] *See id.*

[37] 17 CFR 240.10A–3.

[38] 15 U.S.C. 78f(b)(5).

[39] 15 U.S.C. 78s(b)(2).

[40] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70830; File No. SR–TOPAZ–2013–10]

Self-Regulatory Organizations; Topaz Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Exchange Trading Days and Hours of Business and Trading Halts

November 7, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2013, the Topaz Exchange, LLC (d/b/a ISE Gemini) (the ''Exchange'' or ''Topaz'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange rules to clarify Rule 700, ''Days and Hours of Business,'' and Rule 702, ''Trading Halts.''

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its rules to clarify when it will be open for trading along with when trading halts on underlying securities will inhibit trading on the Exchange. The Exchange is submitting this proposed rule change as a competitive response to a recently approved rule filing submitted by the Chicago Board Options Exchange (''CBOE'').[3] Specifically, the Exchange is proposing to amend its rules to clarify that it will not be solely dependent upon the ''primary market'' when determining when to open and/or halt securities. Instead, the Exchange is proposing to clarify in its rules that it will be open if there is ample liquidity in the underlying market for the security. Generally, the national equity exchanges have similar core business hours.[4] With this proposal, the Exchange is attempting to clarify in its rules that it can remain open to trade options during such business hours even if the ''primary market'' of the underlying securities is not open for business. The Exchange believes that the proposed changes will allow the markets to continue to function in an instance where all exchanges may not be halted. In addition, the Exchange believes the proposed changes will bring greater clarity to its Members regarding when the Exchange will be open for trading.

Currently, Exchange Rule 700 provides that no Member shall make any bid, offer, or transaction on the Exchange before or after business hours.[5] As an administrative cleanup change, the Exchange is proposing to eliminate this language as it is no longer relevant. Executions may only happen during business hours, however, Members have the ability to submit information in the Exchange's electronic trading system outside of business hours. The Exchange believes deleting this language would bring greater clarity to Exchange rules while updating the rule text to the current trading environment.

Next, the Exchange is proposing to add language to Rule 700(a) to specify that the Exchange will not solely rely on the ''primary market'' of an underlying security to determine whether the Exchange may trade the option for such security. The Exchange believes that the proposed rule change will specify that if there is an ample market in the underlying security, the Exchange has the authority to trade the option even if the primary market is not open. The Exchange believes that allowing such discretion will create a lesser market disruption if the primary exchange is unable to open for trading.

Further, Rule 702 specifies when the Exchange will halt trading.[6] Specifically, Rule 702(a)(1) lists factors that may be considered in making that determination. Currently, Rule 702(a)(1)(i) lists, as a factor in the decision with respect to options, ''trading in the underlying security has been halted or suspended in the primary market.'' The Exchange is proposing to add language to state, instead of the ''primary market,'' that the Exchange may factor in if ''trading in the underlying security has been halted or suspended in one or more of the markets trading the underlying security.'' The Exchange believes the proposed changes will grant discretion for the Exchange to be open for trading when there is a robust market in the underlying security rather than limit it to only when the ''primary market'' is open.

Next, the Exchange is proposing to amend Rule 702(a)(2) so that a designated Exchange official may halt trading in an option not only if the ''primary market'' of the security has halted trading but if the security has been halted in ''one or more of the markets trading the underlying security.'' Under the current rule, the designated Exchange official almost certainly must halt trading whenever there is a halt of trading in the underlying security. The Exchange believes this proposed change will provide the designated Exchange official the discretion and the authority to halt trading in an option if the primary market for an underlying security is not open for business however that security is being traded elsewhere. For example, if the primary market is unable to open due to a natural disaster, or other circumstance, but other stock exchanges are trading the underlying security, the proposed change will allow the Exchange to continue trading the overlaying options.

The Exchange believes the proposed changes will allow the Exchange to trade options for underlying stocks even if that underlying listing market shall be unable to trade due to an emergency or other circumstance unique to that stock exchange. Making these proposed changes will allow the Exchange to trade options when an underlying security is trading on any national securities exchange regardless of where that security is formally listed. The proposed discretion attempts to create a lessor [sic] market disruption if a listing or primary market is unable to trade due to some circumstance. Because of the connectivity of the national securities exchanges today, the Exchange believes limiting its ability to trade options to when the primary market of the underlying security is open might hurt

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69558 (May 10, 2013), 78 FR 28911 (May 16, 2013) (SR–CBOE–2013–035).

[4] *See, e.g.,* New York Stock Exchange Rule 51(a) and BATS Exchange Rule 1.5(w) which describes regular trading hours as 9:30 a.m. through 4:00 p.m. Eastern.

[5] *See* Exchange Rule 700.

[6] *See* Exchange Rule 702. The Exchange is not proposing any change to Rule 702(c), *Trading Pauses,* because a trading halt with respect to options is mandatory and not subject to discretion whenever trading in the security underlying the option contract has been paused by the primary listing market.

investors if some circumstance should render the primary exchange inoperable. In addition, the Exchange believes that the reference to ''primary market'' is ambiguous and has the potential to cause confusion. Thus, the Exchange believes by further clarifying the language, it is clearer when the Exchange will be open for trading.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.[7] In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change protects investors by allowing trading in options as long as the underlying security is trading on another exchange. Instead of only relying on the ''primary market,'' the proposed rule change attempts to clarify when options will trade on the Exchange to allow greater continuity in the marketplace. By allowing the Exchange to trade options whenever the underlying securities are trading, the proposed rule change seeks to create less of a disconnect if the ''primary'' market should be experiencing technical difficulties, an emergency, or other situation that may inhibit it to be connected to the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change imposes any burden on intramarket competition because it will apply to all Members [sic]. In addition, the Exchange does not believe the proposed rule change will impose any burden on intermarket competition as it will merely give the Exchange discretion to trade options when there is an ample market for the underlying security of those options. Thus, the Exchange believes the proposed rule change will promote competition by giving the Exchange the ability to trade options when the underlying security is trading anywhere, and, thus, helping the Exchange to better participate in the marketplace. Additionally, as noted above, the proposed rule change is a competitive response to a recently approved rule filing submitted by the CBOE.[9] Topaz believes this proposed rule change is necessary to permit fair competition among the options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section19(b)(3)(A)[10] of the Act and Rule 19b–4(f)(6) thereunder[11] because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest, (ii) impose any significant burden on competition, and (iii) become operative for 30 days after its filing date, or such shorter time as the Commission may designate.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–TOPAZ–2013–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–TOPAZ–2013–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–TOPAZ–2013–10 and should be submitted on or before December 5, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–27205 Filed 11–13–13; 8:45 am]

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[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See supra* note 3.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70832; File No. SR–NYSEMKT–2013–88]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending Certain Rules That Address Wash Sales in Order To Harmonize the Exchange's Rules With the Rules of New York Stock Exchange LLC and the Financial Industry Regulatory Authority

November 7, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 29, 2013, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain rules that address wash sales in order to harmonize the Exchange's rules with the rules of New York Stock Exchange LLC (''NYSE'') and the Financial Industry Regulatory Authority (''FINRA''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend certain rules that address wash sales in order to harmonize the Exchange's rules with the rules of NYSE and FINRA.

Background on Harmonization

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. (''NASD''), and NYSE Regulation, Inc. (''NYSER'') consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Act, NYSE, NYSER, and FINRA entered into an agreement (the ''Agreement'') to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations (''FINRA Incorporated NYSE Rules''). The Exchange became a party to the Agreement effective December 15, 2008.[4]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA and NYSE of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[5] In furtherance of this harmonization process, NYSE recently deleted NYSE Rule 476(a)(8) and amended NYSE Rule 6140, both of which address wash sales.[6] To facilitate further the rule harmonization among exchanges, the Exchange proposes to make corresponding changes to its wash sale rules for equities and options.[7]

Background on Wash Sales Rules

Since at least 1970, Rule 4 in Part 1 of the General Rules has provided that no member or member organization shall execute or cause to be executed, or participate in an account for which there is executed on the Exchange, the purchase of any security at successively higher prices or the sale of any security at successively lower prices for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security or for the purpose of unduly or improperly influencing the market price of such security or for the purpose of making a price which does not reflect the true state of the market in such security. Rule 4 applies to both the Exchange's equities and options markets.

When the Exchange was acquired by NYSE Euronext, it adopted the text of certain NYSE rules, including NYSE Rule 476. Exchange Rule 476(a)(8) currently prohibits a member, member organization, principal executive, approved person, registered or non-registered employee of a member or member organization, or person otherwise subject to the jurisdiction of the Exchange from (i) making a fictitious bid, offer, or transaction, (ii) giving an order for the purchase or sale of securities the execution of which would involve no change of beneficial ownership, or (iii) executing such an order with knowledge of its character. Because Rule 476 generally governs disciplinary procedural matters, Rule 476(a)(8) appears in Section 9A of the Office Rules, and as such, by its terms applies to both the Exchange's equities and options markets.

In 2009, the Exchange adopted Rules 6140(a)—Equities and 6140(b)—Equities,[8] which are substantially the same as FINRA Rules 6140(a) and (b) and NYSE Rules 6140(a) and (b), and also address wash sale activity. Rule 6140(a)—Equities is substantially the same as Rule 4 and provides that no member or member organization may execute or cause to be executed or participate in an account for which there are executed purchases of any NMS stock as defined in Rule 600(b)(47) of SEC Regulation NMS (''designated security'') [9] at successively higher

[4] *See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as ''Common Rules''); and 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE MKT LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE, or NYSE MKT to the substance of any of the Common Rules.

[5] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[6] *See* Securities Exchange Act Release No. 69751 (June 13, 2013), 78 FR 36611 (June 18, 2013) (SR–NYSE–2013–29).

[7] All references to rules herein are to NYSE MKT rules unless otherwise noted.

[8] *See* Securities Exchange Act Release No. 59975 (May 26, 2009), 74 FR 26449 (June 2, 2009) (SR–NYSEALTR–2009–26).

[9] Under Rule 600(b)(47), an NMS stock means any national market system security other than an option.

prices, or sales of any such security at successively lower prices, for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security or for the purpose of unduly or improperly influencing the market price for such security or for the purpose of establishing a price that does not reflect the true state of the market in such security. Rule 6140(b)—Equities prohibits a member or member organization, for the purpose of creating or inducing a false or misleading appearance of activity in a designated security or creating or inducing a false or misleading appearance with respect to the market in such security, from:

(1) Executing any transaction in such security which involves no change in the beneficial ownership thereof;

(2) entering any order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties; or

(3) entering any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.

The Exchange notes that Rule 476(a)(8), which the NYSE adopted when it was operating in a manual on-Floor trading environment, has a different scienter standard than Rule 6140—Equities, NYSE Rule 6140, FINRA Rule 6140, and Rule 4. These latter rules provide that a market participant is prohibited from engaging in wash sales that have the purpose of creating or inducing a false or misleading appearance of activity in a designated security. The ''purpose'' or scienter requirement in Rule 6140—Equities, NYSE Rule 6140, and FINRA Rule 6140 recognizes that in today's markets there can be certain instances of trading activity that may inadvertently and unknowingly result in executions with no change in beneficial ownership, for example trades entered from an off-Floor participant that experience latency issues over which the participant has little or no control, and that such conduct should not always be treated as a wash sale violation if the market participant did not act with purpose.

On the other hand, Rule 476(a)(8) prohibits (i) making a fictitious bid, offer, or transaction, (ii) giving an order for the purchase or sale of securities the execution of which would involve no change of beneficial ownership, or (iii) executing such an order with knowledge of its character. The second prong can be read as having no scienter requirement.[10] As such, the example given above involving an off-Floor market participant's algorithmic orders that inadvertently execute against themselves due to latency issues could be deemed a violation of the second prong of Rule 476(a)(8).

Proposed Rule Change

The Exchange proposes to amend its wash sale rules to achieve a greater level of internal consistency as well as consistency with FINRA's and NYSE's rules. The Exchange believes that the proposed rule change would promote harmonization, consistency, transparency, and clarity with respect to the Exchange's rules and thereby facilitate FINRA's enforcement of them.[11]

First, the Exchange proposes to eliminate Rule 476(a)(8). The Exchange believes that the conduct described in that rule should not be treated as a wash sale violation in all instances. The Exchange would instead utilize Rule 6140—Equities for wash sale disciplinary actions in its equities market.

Second, so that there is no change in the scope of equity market participants subject to disciplinary action for wash sales, the Exchange proposes to make a conforming amendment to Rules 6140(a)—Equities and 6140(b)—Equities to provide that the rules apply not only to members and member organizations but also to principal executives, approved persons, registered or non-registered employees of a member or member organization or persons otherwise subject to the jurisdiction of the Exchange.

Finally, the Exchange proposes to delete Rule 4, marking it ''Reserved,'' and add substantially the same text as Rules 6140(a)—Equities and 6140(b)—Equities to Rule 995NY as new subparagraphs (e) and (f) so that the substance of the wash sale prohibitions in Rules 6140(a)—Equities and 6140(b)—Equities also applies to trading on the Exchange's options market, thereby creating greater consistency in the prohibitions against wash sale trading between the Exchange's equities and options markets. The references to a ''designated security'' in the text of these equities rules would be replaced with ''listed option'' in proposed Rule 995NY and similarly references to a ''member'' or ''member organization'' would be replaced with ''ATP Holder.'' The Exchange believes that locating these provisions in the options rules will give options market participants better notice of this prohibited conduct.[12]

The Exchange believes that the proposed rule change would not result in any material diminution of the Exchange's enforcement authority or any material change in surveillance of potentially violative activity. The Exchange may still bring a disciplinary action in appropriate cases where a market participant engages in a significant amount of trades without change of beneficial ownership, even if such activity does not violate proposed Rule 6140(b)—Equities or proposed Rule 995NY(f) per se because the participant did not act with ''purpose.'' Such conduct could also give rise to other violations, such as a failure to supervise under Rule 342—Equities or Rule 922, and the Exchange's affiliate has brought at least one such case.[13] Such conduct could also violate just and equitable principles of trade or otherwise constitute unethical activity under Rule 476(a)(6) or Rule 2010—Equities.[14]

[10] In at least one case involving the Exchange's affiliate, NYSE, a hearing panel was divided as to whether scienter is required in order to find a violation of the second prong of NYSE Rule 476(a)(8), which is identical to Rule 476(a)(8), and adjudged the respondent not guilty. *See* In the Matter of X, NYSE Hearing Panel Decision 92–163 (October 23, 1992).

[11] The Exchange notes that it can bring disciplinary actions under Rule 476(a)(8) for conduct that occurred prior to the time the rule is deleted. Thus, the proposed rule change would have no impact on ongoing disciplinary actions involving violations of Rule 476(a)(8).

[12] The Exchange also proposes a technical amendment to move a definition of a term that is used in Rule 995NY(c) to that subparagraph of the rule. Specifically, the definition of the term ''related instrument'' currently appears at the end of the rule following the designation of subparagraph (d) and the text thereof, although that term is used in subparagraph (c). As such, the Exchange proposes to move the text of the definition of ''related instrument'' to Rule 995NY(c).

[13] *See* In the Matter of Goldman Sachs & Co., NYSE Hearing Board Decision 12–3 (April 4, 2012) (between January 2009 and at least September 2011, member firm violated NYSE Rule 342, which is substantially the same as Rule 342—Equities, in its capacity as a NYSE Supplemental Liquidity Provider by failing to maintain supervisory procedures that were reasonably designed to detect and prevent potentially violative wash trading activity).

[14] *See* Calvin David Fox, 56 SE.C. 1371, 1376 (2003) (''With respect to a charge that conduct was inconsistent with just and equitable principles of trade, we have held that a self-regulatory organization need not find that the respondent acted with scienter, but must find that the respondent acted in bad faith or unethically.''). Rule 2010—Equities is a broad ethical concept that covers all unethical business-related conduct. *See also* In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated, NYSE Hearing Board

Continued

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5),[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change supports the objectives of the Act by addressing an inconsistency in the scienter requirements between Rule 476(a)(8) on the one hand and Rule 4, Rule 6140—Equities, NYSE Rule 6140, and FINRA Rule 6140 on the other. Eliminating this inconsistency would provide member organizations with better notice of prohibited wash sale activities in the Exchange's equities and options markets and promote transparency and clarity with respect to the Exchange's rules, thereby facilitating FINRA's enforcement of them. The proposed rule change also would achieve greater consistency between the Exchange's options and equities rules that prohibit wash sale activity. Moreover, the proposed rule change would not result in any material diminution of the Exchange's overall enforcement authority or any material change in surveillance of potentially problematic trading activity. The Exchange may still bring a disciplinary action in appropriate cases where a market participant engages in a significant amount of trades without change of beneficial ownership, even if such activity does not violate proposed Rule 6140(b)—Equities or proposed Rule 995NY(f) per se because the participant did not act with ''purpose,'' because such conduct could violate supervision rules, just and equitable principles of trade, or other Exchange rules prohibiting unethical conduct. As such, the Exchange's rules would continue to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues, but rather to achieve greater consistency both within the Exchange's rules and among Exchange, NYSE, and FINRA rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSEMKT–2013–88 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEMKT–2013–88. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEMKT–2013–88 and should be submitted on or before December 5, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–27240 Filed 11–13–13; 8:45 am]

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Decision 10–13 (May 14, 2010) (firm violated just and equitable principles of trade in that it introduced prearranged or wash sales in the round-lot portion of a partial round lot order); In the Matter of Robert Cutter Matlock, Jr., NYSE Hearing Board Decision 06–19 (March 27, 2006) (Exchange need not prove scienter for violations of just and equitable principles of trade, but rather is required to show the respondent acted in bad faith or unethically); In the Matter of Mary Roy Wong, NYSE Hearing Board Decision 06–187 (February 13, 2007) (Exchange need not prove scienter for violations of just and equitable principles of trade, but rather is required to show the respondent acted in bad faith or unethically).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70828; File No. SR–NASDAQ–2013–121]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change To List and Trade Shares of the First Trust Low Beta Income Fund of First Trust Exchange-Traded Fund VI

November 7, 2013.

I. Introduction

On September 12, 2013, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission

(''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the First Trust Low Beta Income ETF (''Fund'') under Nasdaq Rule 5735. The proposed rule change was published for comment in the **Federal Register** on September 26, 2013.[3] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by First Trust Exchange-Traded Fund VI (''Trust''). The Trust is registered with the Commission as an investment company.[4] The Fund is a series of the Trust.

First Trust Advisors L.P. will be the investment adviser (''Adviser'') to the Fund. First Trust Portfolios L.P. (''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. Brown Brothers Harriman & Co. will act as the administrator, accounting agent, custodian and transfer agent to the Fund.

The Exchange represents that the Adviser is not a broker-dealer, but is affiliated with the Distributor, a broker-dealer, and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.[5] The Exchange represents that the Shares will be subject to Nasdaq Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.[6] The Exchange represents that for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 under the Act.[7]

Principal Investments

The Fund's investment objective is to provide current income. The Fund will pursue its objective by investing in large-cap U.S. exchange-traded equity securities and by utilizing an ''options strategy'' consisting of buying U.S. exchange-traded put options on the Standard & Poor's 500 Index (''Index'') and writing (selling) U.S. exchange-traded covered call options on the Index.

In pursuing its investment objective, under normal market conditions,[8] the Fund will invest primarily in large-cap U.S. exchange-traded equity securities. The Fund will also employ an options strategy in which it will write U.S. exchange-traded covered call options on the Index in order to seek additional cash flow in the form of premiums on the options. Those premiums may be distributed to shareholders on a monthly basis or used to purchase U.S. exchange-traded put options on the Index that seek to provide the Fund with downside protection, and which are expected to reduce the Fund's price sensitivity to declining markets. The market value of the options strategy may be up to 20% of the Fund's overall net asset value.

The equity securities in which the Fund will invest and the options that the Fund will buy and/or write will be limited to U.S. exchange-traded securities and options, respectively, that trade in markets that are members of the Intermarket Surveillance Group (''ISG'') or are parties to a comprehensive surveillance sharing agreement with the Exchange.[9]

The equity securities held by the Fund will be selected using a mathematical optimization process which attempts to tilt the Fund's common stock portfolio toward higher dividend paying stocks. The equity securities held by the Fund may include non-U.S. securities that are listed on a U.S. securities exchange in the form of American Depositary Receipts (''ADRs'') and Global Depositary Receipts (''GDRs,'' and together with ADRs, ''Depositary Receipts''). The equity securities will be periodically rebalanced.

The options portion of the portfolio will generally consist of (i) U.S. exchange-traded covered calls or covered call spreads on the Index that are written by the Fund and (ii) U.S. exchange-traded puts on the Index that are purchased by the Fund. The call options written by the Fund will typically be a laddered portfolio of one-week, one-month, two-month, and three-month call options written at-the-money to slightly out-of-the-money. A call option will give the holder the right to buy the Index at a predetermined strike price from the Fund. The notional value of calls written (including calls and call spreads on the Index and/or other indexes as described in Other Investments below) will generally be between 25% and 75% of the overall Fund.

The put positions held by the Fund will generally average two to three months to expiration (calculated at the time of purchase) and will consist of out-of-the-money Index put options. A put option will give the Fund the right to sell the Index at a predetermined strike price to the writer of the put. The notional value of the put portfolio held by the Fund (including puts on the Index and/or other indexes as described in Other Investments below) will generally be between 10% and 75% of the overall Fund.

Other Investments

In addition to the options strategy described in Principal Investments above, the Fund may invest up to 10% of the market value of its net assets in futures, options, options on futures, total return swaps, credit default swaps, and forward contracts.[10] The Fund may utilize such derivatives to enhance return, to hedge some of the risks of its investments in securities, as a substitute

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70459 (Sept. 20, 2013), 78 FR 59394 (Sept. 26, 2013) (''Notice'').

[4] The Trust has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission. *See* Post-Effective Amendment No. 4 to Registration Statement on Form N–1A for the Trust, dated Jan. 16, 2013 (File Nos. 333–182308 and 811–22717). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (''1940 Act''). *See* Investment Company Act Release No. 28468 (Oct. 27, 2008) (File No. 812–13477).

[5] *See* Notice *supra* note 3, 78 FR at 59400. The Exchange states that in the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. *See id.*

[6] *See id.* at 59398.

[7] *See* 17 CFR 240.10A–3. *See also* Notice, *supra* note 3, 78 FR at 59398.

[8] The term ''under normal market conditions'' includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the securities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. In periods of extreme market disturbance, the Fund may take temporary defensive positions, by overweighting its portfolio in cash/cash-like instruments; however, to the extent possible, the Adviser would continue to seek to achieve the Fund's investment objective.

[9] A list of ISG members is available at *www.isgportal.org.*

[10] To the extent practicable, the Fund will invest in swaps cleared through the facilities of a centralized clearing house.

for a position in the underlying asset, to reduce transaction costs, to maintain full market exposure (which means to adjust the characteristics of its investments to more closely approximate those of the markets in which it invests), to manage cash flows, or to preserve capital. In attempting to enhance returns and/or hedge risks, the Fund may buy and write U.S. exchange-traded options on single stocks included in the portfolio, on the Index, and/or on other equity indexes. The Fund may also write covered call spreads on the Index and/or other equity indexes.

Under normal market conditions, the Fund may invest up to 10% of its net assets in short-term debt securities and cash equivalents, or it may hold cash. The percentage of the Fund's net assets invested in such holdings will vary and will depend on several factors, including market conditions.

For temporary defensive purposes and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies and invest part or all of its assets in short-term debt securities or cash equivalents or it may hold cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances. The use of temporary investments will not be a part of a principal investment strategy of the Fund.

Short-term debt securities are securities from issuers having a long-term debt rating of at least A by Standard & Poor's Ratings Group (''S&P Ratings''), Moody's Investors Service, Inc. (''Moody's''), or Fitch, Inc. (''Fitch''), and having a maturity of one year or less. Short-term debt securities are defined to include, without limitation, the following: (1) U.S. government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (4) repurchase agreements,[11] which involve purchases of debt securities; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; and (6) commercial paper, which is short-term unsecured promissory notes. The Fund may only invest in commercial paper rated A–1 or higher by S&P Ratings, Prime-1 or higher by Moody's, or F2 or higher by Fitch.

The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction does not apply to obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities, or securities of other investment companies.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

Additional information regarding the Trust, Fund, and Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes, calculation of net asset value per share (''NAV''), availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice or the Registration Statement, as applicable.[12]

[11] The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust. The Adviser will review and monitor the creditworthiness of such institutions. The Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

[12] *See* Notice and Registration Statement, *supra* notes 3 and 4, respectively.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[13] and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[15] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[16] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares and any underlying exchange-traded products.[17] In addition, the Intraday Indicative Value (as defined in Nasdaq Rule 5735(c)(3)) will be based upon the current value of the components of the Disclosed Portfolio (as defined in Nasdaq Rule 5735(c)(2)), will be available on the NASDAQ OMX Information LLC proprietary index data service,[18] and will be updated and

[13] 15 U.S.C. 78f.

[14] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[17] *See* Notice, *supra* note 3, 78 FR at 59398.

[18] According to the Exchange, the NASDAQ OMX Global Index Data Service is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for exchange-traded funds. *See id.* at 59400.

widely disseminated and broadly displayed at least every 15 seconds during the Regular Market Session.[19] On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, which will form the basis for the Fund's calculation of NAV at the end of the business day.[20] The NAV of the Fund will be determined once each business day, normally as of the close of trading on the New York Stock Exchange (normally 4:00 p.m. Eastern time).[21] Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.[22] Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.[23] Intra-day, executable price quotations for the securities and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable.[24] Intra-day price information will also be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by authorized participants and other investors.[25] The Distributor's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.[26]

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[27] In addition, a basket composition file, which includes the security names, amounts and share quantities, as applicable, required to be delivered in exchange for one Creation Unit of the Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of Nasdaq via the National Securities Clearing Corporation.[28] Further, trading in the Shares will be subject to Nasdaq 5735(d)(2)(D), which sets forth circumstances under which trading in the Shares of the Fund may be halted.[29] The Exchange may halt trading in the Shares if trading is not occurring in the securities or the financial instruments constituting the Disclosed Portfolio of the Fund or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[30] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[31] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.[32] The Exchange also states that the Adviser is affiliated with a broker-dealer and has implemented a firewall with respect to its broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio.[33] The Exchange states that the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, will communicate as needed regarding trading in the Shares, in the equity securities in which the Fund will invest, and in the U.S. exchange-traded options that the Fund will buy and write, with other markets and other entities that are members of the ISG, and that FINRA may obtain trading information regarding trading in the Shares and in such equity securities and U.S. exchange-traded options from such markets and other entities.[34] In addition, the Exchange may obtain information regarding trading in the Shares and in such equity securities and U.S. exchange-traded options from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[35]

The Exchange further represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.[36] In support of this proposal, the Exchange has made representations, including:

(1) The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and

[19] *See id.*

[20] On a daily basis, the Disclosed Portfolio will include for each portfolio security and other financial instrument of the Fund the following information: Ticker symbol (if applicable), name of security and financial instrument, number of shares (if applicable) and dollar value of securities and financial instruments held by the Fund, and percentage weighting of the security and financial instrument in the Fund. The Web site information will be publicly available at no charge. *See id.* at 59398.

[21] *See id.*

[22] *See id.*

[23] *See id.*

[24] *See id.*

[25] *See id.*

[26] *See id.* at 59400.

[27] *See id.*

[28] *See id.* at 59398.

[29] *See id.* at 59399.

[30] *See id. See also* 5735(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt or pause trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. *See* Notice, *supra* note 3, 78 FR at 59399.

[31] *See* Nasdaq Rule 5735(d)(2)(B)(ii).

[32] *See* Notice, *supra* note 3, 78 FR at 59399.

[33] *See supra* note 5 and accompanying text. An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[34] *See* Notice, *supra* note 3, 78 FR at 59399.

[35] *See id.*

[36] *See id.* at 56399.

detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and continued listing, the Fund must be in compliance with Rule 10A–3 under the Exchange Act.[37]

(6) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

(7) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment); will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained; and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities.

(8) The equity securities in which the Fund will invest and the options that the Fund will buy and write will be limited to U.S. exchange-traded securities and options, respectively, that trade in markets that are members of the ISG, which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.

(9) Under normal market conditions, the Fund will invest primarily in large-cap U.S. exchange-traded equity securities. The Fund will also utilize an options strategy consisting of buying U.S. exchange-traded put options on the Index and writing U.S. exchange-traded covered call options on the Index. The market value of the options strategy may be up to 20% of the Fund's overall net asset value.

(10) In addition to the options strategy that is part of the Fund's principal investment strategy, the Fund may invest up to 10% of the market value of its net assets in futures, options, options on futures, total return swaps, credit default swaps, and forward contracts. To the extent practicable, the Fund will invest in swaps cleared through the facilities of a centralized clearing house.

(11) The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[38] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[39] that the proposed rule change (SR–NASDAQ–2013–121) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–27203 Filed 11–13–13; 8:45 am]

BILLING CODE 8011–01–P

[37] 17 CFR 240.10A–3.

[38] 15 U.S.C. 78f(b)(5).

[39] 15 U.S.C. 78s(b)(2).

[40] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70827; File No. SR–CBOE–2013–105]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the CBSX Fees Schedule

November 7, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fees Schedule of its CBOE Stock Exchange (''CBSX''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBSX proposes to amend its Fees Schedule to remove AAPL, BAC, GOOG, NOK, and SIRI (the ''Removed Symbols'') from its list of Select Symbols for whom transactions priced $1 or greater (all fees addressed in this filing relate to transactions priced $1 or greater) are assessed a fee of $0.0050 per share (for Maker executions) and provided a rebate of $0.0045 per share (for Taker executions). This means that the Removed Symbols will now fall into the ''all other securities'' category and fees and rebates applicable to ''all other securities'' will apply to the Removed Symbols, which are as follows (and are not being changed in this proposed rule change):

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Execution type	Rate
Maker (adds less than 0.08% of TCV of liquidity in one day) (1)(5)	$0.0018 per share.
Maker (adds at least 0.08% but less than 0.16% of TCV of liquidity in one day) (1)(5)	$0.0017 per share.
Maker (adds at least 0.16% but less than 0.24% of TCV of liquidity in one day) (1)(5)	$0.0016 per share.
Maker (adds at least 0.24% but less than 0.42% of TCV of liquidity in one day) (1)(5)	$0.0015 per share.
Maker (adds 0.42% or more of TCV of liquidity in one day) (1)(5)	$0.0014 per share.
Taker (removes 9,999,999 shares or less of liquidity in one day (1) or less than 85% Execution Rate)	$0.0015 rebate per share.
Taker (removes 10,000,000 shares or more of liquidity in one day (1) and equal to or greater than 85% Execution Rate).	$0.0017 rebate per share.
Maker (adds liquidity using a silent order)	$0.0018 per share.
Taker (removes silent order liquidity)	$0.0015 rebate per share.
Maker (adds liquidity using a silent-mid or silent-post-mid order)	$0.0018 per share.
Taker (removes silent-mid or silent-post-mid liquidity)	$0.0015 rebate per share.

The Removed Symbols had been included in the Select Symbols in an aspirational attempt to increase liquidity provision in these products, but such increased liquidity has not been achieved. CBSX hopes that moving the Removed Symbols into the ''all other securities'' category will increase liquidity provision in these products.

As no symbols would be listed in the Select Symbols, footnote (6) of the CBSX Fees Schedule would be amended to read ''There are no Select Symbols at this time.'' The Exchange does not wish to remove the concept of the Select Symbols (and corresponding fees structure) from the CBSX Fees Schedule because CBSX may desire in the future to move other symbols into the ''Select Symbols'' and apply the corresponding Select Symbols fees structure to such symbols (of course, the Exchange would submit a proposed rule change in order to effect such a move).

The proposed change is to take effect on November 1, 2013.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[3] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[4] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to remove the Removed Symbols from the Select Symbols and to assess the Removed Symbols the fees of ''all other securities'' because transactions in these products will merely be assessed the fee and rebate amounts of all other CBSX securities. Further, this move is designed to attract more trading in these products, as placing the Removed Symbols in the Select Symbols (and applying the Select Symbols fees structure to the Removed Symbols) failed to cause the desired increase in trading volume in the Removed Symbols. Finally, these fees for the Removed Symbols will be the same as for all other CBSX securities, and will be assessed equally to all market participants.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. CBSX does not believe that the proposed rule changes will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes will be applied to all market participants. CBSX does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes only affect trading on CBSX. Further, the proposed changes are designed to incentivize more trading on CBSX, which could encourage other exchanges to enact their own competitive changes. To the extent that the proposed changes make CBSX a more attractive trading venue for market participants on other exchanges, such market participants may elect to become CBSX market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and paragraph (f) of Rule 19b–4[6] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2013–105 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2013–105. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f).

only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–105, and should be submitted on or before December 5, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–27202 Filed 11–13–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70831; File No. SR–FICC–2013–09]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Make the U.S. Department of the Treasury's Floating Rate Notes Eligible for Netting Service and GCF Repo® at FICC's Government Securities Division

November 7, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 28, 2013, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this rule filing is to make the U.S. Treasury Department's floating rate notes eligible for the netting service and GCF Repo® service at the Government Securities Division (''GSD'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(i) The purpose of this rule filing is to make the U.S. Treasury Department's floating rate notes eligible for the netting service and GCF Repo® service at the GSD.

Last year, the U.S. Department of the Treasury (the ''Treasury Department'') announced its plan to issue Treasury notes with a floating rate coupon (the ''Floating Rate Notes'').

During the May 1, 2013 Refunding Meeting, the Treasury Department stated that it plans to develop a Floating Rate Notes securities program to complement the existing suite of securities it issues and to support its broader debt management objective. The Floating Rate Notes will be the first added U.S. Treasury debt security since the Treasury Inflation-Protected Securities, known as TIPS, were introduced in 1997. The Treasury Department anticipates that the first auction will occur in January 2014.[3]

From a trading perspective and to ensure that the introduction of the Floating Rate Notes does not result in any increased clearance and settlement risk to the marketplace, FICC believes that these securities should be eligible for comparison, netting, and settlement by GSD. With this in mind, GSD is planning to make Floating Rate Notes eligible for its netting service starting with the January 2014 auction of the two-year Floating Rate Notes (other maturities will be issued later).

With respect to the GCF Repo® service, Floating Rate Notes will be included in GSD's existing Treasury Generic CUSIP Numbers.[4] The inclusion of Floating Rate Notes in the GCF Repo® service necessities a change to the GSD Rulebook in connection with the collateral allocation provisions which are covered in GSD Rule 20 Section 3. Because of their adjustable coupon, Floating Rate Notes will not be eligible for collateral allocation obligations or substitutions with respect to the GCF Repo Generic CUSIPs representing Treasury inflation-protected securities (''TIPS''), separate trading of registered interest and principal securities (''STRIPS''), or fixed-rate mortgage-backed securities issued by Federal National Mortgage Association (''Fannie Mae''), Federal Home Loan Mortgage Corporation (''Freddie Mac'') and Government National Mortgage Association (''Ginnie Mae''). As a result, GSD Rule 20 Section 3 has been revised to reflect this change.

In order for GSD to process Floating Rate Notes, various enhancements to FICC's systems and member output have been made in the following areas:

- Creation and maintenance of a historical database of reference indices. This data is necessary for determining coupon, which is used in valuing positions for settlement purposes and for forward margin and clearing fund calculations.
- Modification of the security database in order for it to work in conjunction with the floating rate, reset date, reset rate basis and spread.
- Modifications to member output formats for both messaging and end of day machine readable output in order to accommodate the additional fields.

GSD will test with its membership before the launch of the Floating Rate Notes. This will ensure that members can properly submit and receive transaction data in connection with the Floating Rate Notes. GSD has provided information to member firms about GSD's proposed processing of the

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Press Release, U.S. Department of the Treasury *August 2013 Quarterly Refunding Statement of Assistant Secretary Rutherford* (July 31, 2013), available at *www.treasury.gov.*

[4] Pursuant to the GSD Rules, the term ''Generic CUSIP Number'' means a Committee on Uniform Securities Identification Procedures identifying number established for a category of securities, as opposed to a specific security. The Corporation shall use separate Generic CUSIP Numbers for General Collateral Repo Transactions and GCF Repo Transactions. GSD Rulebook, Definitions.

Floating Rate Notes and will continue to do so prior to allowing Floating Rate Notes eligible for processing.[5]

(ii) The proposed rule changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder, because the processing of Floating Rate Notes allows GSD to provide its beneficial clearance and settlement services to a new set of Government securities transactions in which the GSD members will be engaged. This expansion facilitates the prompt and accurate clearance and settlement of securities transaction and assures the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any negative impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule changes have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

D. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

(a) Not applicable.
(b) Not applicable.
(c) Not applicable.
(d) Not applicable.
(e) Not applicable.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[5] GSD issued Important Notice GOV012.13 on February 23, 2013 and Important Notice GOV056.13 on August 19, 2013. Both Important Notices provide members with data output guidelines and trade messaging changes. The notices are available at *www.dtcc.com*.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or
- Send an email to *rule-comment@sec.gov*. Please include File Number SR–FICC–2013–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FICC–2013–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room Section located at 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2013/ficc/SR_FICC_2013_09.pdf*.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2013–09 and should be submitted on or before December 5, 2013.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–27206 Filed 11–13–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70834; File No. SR–ISE–2013–55]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Trading Days and Hours of Business and Trading Halts

November 7, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 31, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to clarify Rule 700, ''Days and Hours of Business,'' and Rule 702, ''Trading Halts.''

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its rules to clarify when it will be open for trading along with when trading halts on underlying securities will inhibit trading on the Exchange. The Exchange is submitting this proposed rule change as a competitive response to a recently approved rule filing submitted by the Chicago Board Options Exchange (''CBOE'').[3] Specifically, the Exchange is proposing to amend its rules to clarify that it will not be solely dependent upon the ''primary market'' when determining when to open and/or halt securities. Instead, the Exchange is proposing to clarify in its rules that it will be open if there is ample liquidity in the underlying market for the security. Generally, the national equity exchanges have similar core business hours.[4] With this proposal, the Exchange is attempting to clarify in its rules that it can remain open to trade options during such business hours even if the ''primary market'' of the underlying securities is not open for business. The Exchange believes that the proposed changes will allow the markets to continue to function in an instance where all exchanges may not be halted. In addition, the Exchange believes the proposed changes will bring greater clarity to its Members regarding when the Exchange will be open for trading.

Currently, Exchange Rule 700 provides that no Member shall make any bid, offer, or transaction on the Exchange before or after business hours.[5] As an administrative cleanup change, the Exchange is proposing to eliminate this language as it is no longer relevant. Executions may only happen during business hours, however, Members have the ability to submit information in the Exchange's electronic trading system outside of business hours. The Exchange believes deleting this language would bring greater clarity to Exchange rules while updating the rule text to the current trading environment.

Next, the Exchange is proposing to add language to Rule 700(a) to specify that the Exchange will not solely rely on the ''primary market'' of an underlying security to determine whether the Exchange may trade the option for such security. The Exchange believes that the proposed rule change will specify that if there is an ample market in the underlying security, the Exchange has the authority to trade the option even if the primary market is not open. The Exchange believes that allowing such discretion will create a lesser market disruption if the primary exchange is unable to open for trading.

Further, Rule 702 specifies when the Exchange will halt trading.[6] Specifically, Rule 702(a)(1) lists factors that may be considered in making that determination. Currently, Rule 702(a)(1)(i) lists, as a factor in the decision with respect to options, ''trading in the underlying security has been halted or suspended in the primary market.'' The Exchange is proposing to add language to state, instead of the ''primary market,'' that the Exchange may factor in if ''trading in the underlying security has been halted or suspended in one or more of the markets trading the underlying security.'' The Exchange is proposing to make similar changes in Rule 702(a)(2)(iv) which lists factors in making the determination in an Equity Security (as defined in ISE Rule 2100). The Exchange believes the proposed changes will grant discretion for the Exchange to be open for trading when there is a robust market in the underlying security rather than limit it to only when the ''primary market'' is open.

Next, the Exchange is proposing to amend Rule 702(a)(3) so that a designated Exchange official may halt trading in an option not only if the ''primary market'' of the security has halted trading but if the security has been halted in ''one or more of the markets trading the underlying security.'' Under the current rule, the designated Exchange official almost certainly must halt trading whenever there is a halt of trading in the underlying security. The Exchange believes this proposed change will provide the designated Exchange official the discretion and the authority to halt trading in an option if the primary market for an underlying security is not open for business however that security is being traded elsewhere. For example, if the primary market is unable to open due to a natural disaster, or other circumstance, but other stock exchanges are trading the underlying security, the proposed change will allow the Exchange to continue trading the overlaying options.

The Exchange believes the proposed changes will allow the Exchange to trade options for underlying stocks even if that underlying listing market shall be unable to trade due to an emergency or other circumstance unique to that stock exchange. Making these proposed changes will allow the Exchange to trade options when an underlying security is trading on any national securities exchange regardless of where that security is formally listed. The proposed discretion attempts to create a lessor [sic] market disruption if a listing or primary market is unable to trade due to some circumstance. Because of the connectivity of the national securities exchanges today, the Exchange believes limiting its ability to trade options to when the primary market of the underlying security is open might hurt investors if some circumstance should render the primary exchange inoperable. In addition, the Exchange believes that the reference to ''primary market'' is ambiguous and has the potential to cause confusion. Thus, the Exchange believes by further clarifying the language, it is clearer when the Exchange will be open for trading.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.[7] In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change protects investors by allowing trading in options as long as

[3] *See* Securities Exchange Act Release No. 69558 (May 10, 2013), 78 FR 28911 (May 16, 2013) (SR–CBOE–2013–035).

[4] *See, e.g.,* New York Stock Exchange Rule 51(a) and BATS Exchange Rule 1.5(w) which describes regular trading hours as 9:30 a.m. through 4:00 p.m. Eastern.

[5] *See* Exchange Rule 700.

[6] *See* Exchange Rule 702. The Exchange is not proposing any change to Rule 702(c), *Trading Pauses,* because a trading halt with respect to options is mandatory and not subject to discretion whenever trading in the security underlying the option contract has been paused by the primary listing market.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

the underlying security is trading on another exchange. Instead of only relying on the ''primary market,'' the proposed rule change attempts to clarify when options will trade on the Exchange to allow greater continuity in the marketplace. By allowing the Exchange to trade options whenever the underlying securities are trading, the proposed rule change seeks to create less of a disconnect if the ''primary'' market should be experiencing technical difficulties, an emergency, or other situation that may inhibit it to be connected to the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change imposes any burden on intramarket competition because it will apply to all Members [sic]. In addition, the Exchange does not believe the proposed rule change will impose any burden on intermarket competition as it will merely give the Exchange discretion to trade options when there is an ample market for the underlying security of those options. Thus, the Exchange believes the proposed rule change will promote competition by giving the Exchange the ability to trade options when the underlying security is trading anywhere, and, thus, helping the Exchange to better participate in the marketplace. Additionally, as noted above, the proposed rule change is a competitive response to a recently approved rule filing submitted by the CBOE.[9] ISE believes this proposed rule change is necessary to permit fair competition among the options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section19(b)(3)(A)[10] of the Act and Rule 19b–4(f)(6) thereunder[11] because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest, (ii) impose any significant burden on competition, and (iii) become operative for 30 days after its filing date, or such shorter time as the Commission may designate.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2013–55 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2013–55. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2013–55 and should be submitted on or before December 5, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–27207 Filed 11–13–13; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8521]

In the Matter of the Designation of Jama'atu Ansarul Muslimina Fi Biladis-Sudan Also Known as Ansaru Also Known as Ansarul Muslimina Fi Biladis Sudan Also Known as Vanguards for the Protection of Muslims in Black Africa Also Known as JAMBS Also Known as Jama'atu Ansaril Muslimina Fi Biladis Sudan as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled in this matter and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that there is a sufficient factual basis to find that the relevant circumstances described in section 219 of the Immigration and Nationality Act, as amended (hereinafter ''INA'') (8 U.S.C. 1189), exist with respect to Jama'atu Ansarul Muslimina Fi Biladis-Sudan, also known as Ansaru, also known as Ansarul Muslimina Fi Biladis Sudan, also known as Vanguards for the Protection of Muslims in Black Africa, also known as JAMBS, also known as Jama'atu Ansaril Muslimina Fi Biladis Sudan.

Therefore, I hereby designate the aforementioned organization and its aliases as a Foreign Terrorist

[9] *See supra* note 3.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

Organization pursuant to section 219 of the INA.

This determination shall be published in the **Federal Register**.

Dated: November 5, 2013.

John F. Kerry,

Secretary of State.

[FR Doc. 2013–27293 Filed 11–13–13; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 8519]

In the Matter of the Designation of Boko Haram Also Known as Nigerian Taliban Also Known as Jama'atu Ahlus-Sunnah Lidda'Awati Wal Jihad Also Known as Jama'atu Ahlis Sunna Lidda'awati wal-Jihad Also Known as People Committed to the Prophet's Teachings for Propagation and Jihad Also Known as Sunni Group for Preaching and Jihad as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled in this matter and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that there is a sufficient factual basis to find that the relevant circumstances described in section 219 of the Immigration and Nationality Act, as amended (hereinafter ''INA'') (8 U.S.C. 1189), exist with respect to Boko Haram, also known as Nigerian Taliban, also known as Jama'atu Ahlus-Sunnah Lidda'Awati Wal Jihad, also known as Jama'atu Ahlis Sunna Lidda'awati wal-Jihad, also known as People Committed to the Prophet's Teachings for Propagation and Jihad, also known as Sunni Group for Preaching and Jihad.

Therefore, I hereby designate the aforementioned organization and its aliases as a Foreign Terrorist Organization pursuant to section 219 of the INA.

This determination shall be published in the **Federal Register**.

Dated: November 5, 2013.

John F. Kerry,

Secretary of State.

[FR Doc. 2013–27296 Filed 11–13–13; 8:45 am]

BILLING CODE 4710–03–P

DEPARTMENT OF STATE

[Public Notice 8522]

In the Matter of the Designation of Jama'atu Ansarul Muslimina Fi Biladis-Sudan Also Known as Ansaru Also Known as Ansarul Muslimina Fi Biladis Sudan Also Known as Vanguards for the Protection of Muslims in Black Africa Also Known as JAMBS Also Known as Jama'atu Ansaril Muslimina Fi Biladis Sudan as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the entity known as Jama'atu Ansarul Muslimina Fi Biladis-Sudan, also known as Ansaru, also known as Ansarul Muslimina Fi Biladis Sudan, also known as Vanguards for the Protection of Muslims in Black Africa, also known as JAMBS, also known as Jama'atu Ansaril Muslimina Fi Biladis Sudan, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: November 5, 2013.

John F. Kerry,

Secretary of State.

[FR Doc. 2013–27301 Filed 11–13–13; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 8520]

In the Matter of the Designation of Boko Haram Also Known as Nigerian Taliban Also Known as Jama'atu Ahlus-Sunnah Lidda'Awati Wal Jihad Also Known as Jama'atu Ahlis Sunna Lidda'awati wal-Jihad Also Known as People Committed to the Prophet's Teachings for Propagation and Jihad Also Known as Sunni Group for Preaching and Jihad as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the entity known as Boko Haram, also known as Nigerian Taliban, also known as Jama'atu Ahlus-Sunnah Lidda'Awati Wal Jihad, also known as Jama'atu Ahlis Sunna Lidda'awati wal-Jihad, also known as People Committed to the Prophet's Teachings for Propagation and Jihad, also known as Sunni Group for Preaching and Jihad, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: November 5, 2013.

John F. Kerry,

Secretary of State.

[FR Doc. 2013–27295 Filed 11–13–13; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2013–0042]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: The Federal Transit Administration invites public comment about our intention to request the Office of Management and Budget's (OMB) approval to renew the following information collections:

Over-the-Road Bus (OTRB) Accessibility Program

49 U.S.C. Section 5339—Alternatives Analysis Program

The information collected is necessary to determine eligibility of applicants and ensure the proper and timely expenditure of federal funds within the scope of each program. The **Federal Register** notice with a 60-day comment period soliciting comments was published on September 24, 2013 (Citation 78 FR 185). No comments were received from that notice.

DATES: Comments must be submitted before December 16, 2013. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Office of Management Planning, (202) 366–0354.

SUPPLEMENTARY INFORMATION:

Title: Over-the-Road Bus (OTRB) Accessibility Program (*OMB Number: 2132–0570*).

Abstract: The Over-the-Road Bus (OTRB) Accessibility Program is authorized under section 3038 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–85, as amended by the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–059, August 10, 2005. OTRBs are used in intercity fixed route service as well as other services, such as commuter, charter and tour bus services. These services are an important element of the U.S. transportation system. TEA–21 authorized FTA's OTRB Accessibility Program to assist OTRB operators in complying with the Department's OTRB Accessibility regulation, ''Transportation for Individuals with Disabilities'' (49 CFR part 37, subpart H). The legislative intent of this grant program is to increase the number of wheelchair accessible OTRBs available to persons with disabilities throughout the country.

Estimated Total Annual Burden: 800 hours.

Title: 49 U.S.C. Section 5339—Alternative Analysis Program (*OMB Number: 2132–0571*).

Abstract: Under Section 3037 of the Safe, Accountable, Flexible, Efficient Transportation Act—A Legacy for Users (SAFETEA–LU), the Alternatives Analysis Program (49 U.S.C. 5339) provides grants to States, authorities of the States, metropolitan planning organizations, and local government authorities to develop studies as part of the transportation planning process. The purpose of the Alternatives Analysis Program is to assist in financing the evaluation of all reasonable modal and multimodal alternatives and general alignment options for identified transportation needs in a particular, broadly defined travel corridor. The transportation planning process of Alternatives Analysis includes an assessment of a wide range of public transportation or multimodal alternatives, which will address transportation problems within a corridor or subarea; provides ample information to enable the Secretary to make the findings of project justification and local financial commitment; supports the selection of a locally preferred alternative; and enables the local Metropolitan Planning Organization to adopt the locally preferred alternative as part of the long-range transportation plan. FTA intends to evaluate program implementation by collecting information such as project milestones and financial status reports.

Estimated Total Annual Burden: 383 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Matthew M. Crouch,

Associate Administrator for Administration.

[FR Doc. 2013–27249 Filed 11–13–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

International Standards on the Transport of Dangerous Goods

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. PHMSA–2013–0237, Notice No. 13–17]

Preparations for the 44th Session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG) and the 26th Session of the UN Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation and the Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that PHMSA and OSHA will conduct a joint public meeting in preparation for United Nations meetings being held in Geneva, Switzerland. PHMSA is hosting the morning portion of the meeting to discuss proposals in preparation for the 44th session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG) to be held November 25 to December 4, 2013, in Geneva. During this meeting, PHMSA is also soliciting comments relative to potential new work items which may be considered for inclusion in its international agenda. OSHA is hosting the afternoon portion of the meeting to discuss proposals in preparation for the 26th session of the United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS) to be held December 4 to 6, 2013, in Geneva. OSHA, along with the U.S. Interagency GHS (Globally Harmonized System of Classification and Labelling of

Chemicals) Coordinating Group, plans to consider the comments and information gathered at this public meeting when developing the U.S. Government positions for the UNSCEGHS meeting.

DATES: The meeting will be held on Tuesday, November 19, 2013. The PHMSA Session will be from 9:00 a.m. to 12:00 noon; while the OSHA Session will be from 1:30 p.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the DOT Headquarters, West Building, Conference Room 7, 1200 New Jersey Avenue SE., Washington, DC 20590.

Registration: It is requested that attendees pre-register for this meeting by completing the form at *http://www.phmsa.dot.gov/hazmat/regs/international.* Attendees may pre-register for the morning PHMSA session, the afternoon OSHA session, or both sessions of the meeting. Failure to pre-register may delay your access to the building. Participants attending in person are encouraged to arrive early to allow time for security checks necessary to obtain access to the building.

Conference call-in and ''live meeting'' capability will be provided for this meeting. Specific information on call-in and live meeting access will be posted when available at *http://www.phmsa.dot.gov/hazmat/regs/international* and at *http://www.osha.gov/dsg/hazcom/.*

FOR FURTHER INFORMATION CONTACT: Vincent Babich or Kevin Leary, Office of Hazardous Materials Safety, International Standards, Department of Transportation, Washington, DC 20590; telephone (202) 366–8553. You may also contact Maureen Ruskin, Office of Chemical Hazards-Metals, OSHA Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3178, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1950.

Copies of this **Federal Register** notice can be obtained as follows: Electronic copies are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as other relevant information, is available also on the OSHA Web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. PHMSA Public Meeting (November 19, 2013; 9:00 a.m.–12:00 Noon)

The primary purpose of this meeting will be to prepare for the 44th session of the UNSCOE TDG. The 44th session of the UNSCOE TDG is the second of four meetings scheduled for the 2013–2014 biennium. The UNSCOE will consider proposals for the 19th Revised Edition of the United Nations Recommendations on the Transport of Dangerous Goods Model Regulations which will be implemented within relevant domestic, regional, and international regulations from January 1, 2017. Copies of working documents, informal documents, and the meeting agenda may be obtained from the United Nations Transport Division's Web site at *http://www.unece.org/trans/main/dgdb/dgsubc3/c3age.html.*

General topics on the agenda for the UNSCOE TDG meeting include:

- Listing, classification and packing
- Electric storage systems
- Transport of gases
- Miscellaneous proposals of amendments to the Model Regulations
- Electronic data interchange for documentation purposes
- Cooperation with the International Atomic Energy Agency (IAEA)
- Global harmonization of transport of dangerous goods regulations
- Globally Harmonized System of Classification and Labeling of Chemicals (GHS)

Following the 44th session of the UNSCOE TDG, a copy of the Sub-Committee's report will be available at the United Nations Transport Division's Web site at *http://www.unece.org/trans/main/dgdb/dgsubc3/c3rep.html.* PHMSA's site at *http://www.phmsa.dot.gov/hazmat/regs/international* provides additional information regarding the UNSCOE TDG and related matters.

II. OSHA Public Meeting (November 19, 2013; 1:30 p.m.–4:30 p.m.)

OSHA is hosting an open informal public meeting of the U.S. Interagency GHS Coordinating Group to provide interested groups and individuals with an update on GHS-related issues and an opportunity to express their views orally and in writing for consideration in developing U.S. Government positions for the upcoming UNSCEGHS meeting. Interested stakeholders may also provide input on issues related to OSHA's activities in the U.S.-Canada Regulatory Cooperation Council (RCC) at the meeting. The public is invited to attend and is requested to pre-register for the meeting by following the instructions provided in the Registration section of this notice. General topics on the agenda include:

- Review of Working papers
- Working Group updates
- Regulatory Cooperation Council (RCC) Update

Information on the work of the UNSCEGHS including meeting agendas, reports, and documents from previous sessions, can be found on the United Nations Economic Commission for Europe (UNECE) Transport Division Web site located at the following web address: *http://www.unece.org/trans/welcome.html.* The UNSCEGHS bases its decisions on Working Papers. The Working Papers for the 26th session of the UNSCEGHS are located at *http://www.unece.org/trans/main/dgdb/dgsubc4/c42013.html.*

Informal Papers submitted to the UNSCEGHS provide information for the subcommittee and are used either as a mechanism to provide information to the subcommittee or as the basis for future Working Papers. Informal Papers for the 26th session of the UNSCEGHS are located at *http://www.unece.org/trans/main/dgdb/dgsubc4/c4inf26.html.*

III. Authority and Signature

Magdy El-Sibaie, Associate Administrator for Hazardous Materials Safety directed the preparation of this notice.

Signed at Washington, DC, on November 7, 2013.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety.

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by the Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

Signed at Washington, DC, on October 29, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–27235 Filed 11–13–13; 8:45 am]

BILLING CODE 4910–60– 4510–26–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Meeting

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of Official Public Release of the Commission's 2013 Annual Report to Congress on November 20, 2013.

SUMMARY: Notice is hereby given of meetings of the U.S.-China Economic and Security Review Commission.

Name: William A. Reinsch, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, evaluate and report to Congress annually on the U.S.-China economic and security relationship. The mandate specifically charges the Commission to prepare a report to Congress ''regarding the national security implications and impact of the bilateral trade and economic relationship between the United States and the People's Republic of China [that] shall include a full analysis, along with conclusions and recommendations for legislative and administrative actions . . .''

Purpose of Meetings

Pursuant to this mandate, the Commission will hold an official public conference in Washington, DC to release the 2013 Annual Report on November 20, 2013.

The Commission is subject to the Federal Advisory Committee Act (FACA) with the enactment of the Science, State, Justice, Commerce and Related Agencies Appropriations Act, 2006 that was signed into law on November 22, 2005 (Public Law 109–108). In accord with FACA, meetings of the Commission to make decisions concerning the substance and recommendations of its 2013 Annual Report to Congress are open to the public.

Topics To Be Discussed

The Commission's 2013 Annual Report contains the following chapters and sections:

- Executive Summary
  - Key Recommendations for Congress
- Introduction
- Chapter 1: The U.S.-China Trade and Economic Relationship
  - Section 1: Trade and Economics Year in Review
  - Section 2: Trends in Chinese Investment in the United States
  - Section 3: Governance and Accountability in China's Financial System
  - Section 4: China's Agriculture Policy, Food Regulation, and the U.S.-China Agriculture Trade
  - Recommendations
- Chapter 2: China's Impact on U.S. Security Interests
  - Section 1: Military and Security Year in Review
  - Section 2: China's Cyber Activities
  - Section 3: China's Maritime Dispute
  - Recommendations
- Chapter 3: China in Asia
  - Section 1: China and the Middle East and North Africa
  - Section 2: Taiwan
  - Section 3: Macau and Hong Kong
  - Recommendations

Dates, Times, and Room Locations (Eastern Daylight Time)

- Wednesday, *November 20, 2013* (9:00 a.m.)—Rayburn House Office Building, Room 2212

ADDRESSES: The Commission's official public conference to release the 2013 Annual Report will be held in the Rayburn House Office Building, Room 2212.

Public seating is limited and will be available on a ''first-come, first-served'' basis. *Advanced reservations are not required. All participants must register at the event table.*

FOR FURTHER INFORMATION CONTACT: Reed Eckhold, Congressional Liaison and Director of Communications, U.S.-China Economic and Security Review Commission, 444 North Capitol Street NW., Suite 602, Washington, DC 20001; Phone: (202) 624–1496; Email: *reckhold@uscc.gov.*

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Pub. L. 109–108 (November 22, 2005).

Dated: November 7, 2013.

Michael Danis,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2013–27189 Filed 11–13–13; 8:45 am]

BILLING CODE 1137–00–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Minority Veterans will meet on December 9–11, 2013, at the Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC. On December 9–10, the sessions will be in room 230 from 8:00 a.m. until 5:00 p.m. and on December 11 in room 730 from 8:00 a.m. until 1:00 p.m. This meeting is open to the public.

The purposes of the Committee are to: Advise the Secretary on the administration of VA benefits and services to minority Veterans; assess the needs of minority Veterans; and evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee makes recommendations to the Secretary regarding such activities.

On December 9, the Committee will receive briefings and updates from the Center for Minority Veterans, Office of Health Equity, Office of Rural Health, Office of Tribal Government Relations (OTGR), and Veterans Benefits Administration. On December 10, the Committee will receive briefings and updates on the National Cemetery Administration (NCA), Center for Women Veterans, Veteran Employment Services Office, Office of Diversity and Inclusion, Office of Policy and Planning, Veterans Health Administration (VHA), and Homeless Programs. On December 11, the Committee will receive a briefing and update on Mental Health Services, Vet Centers, and hold an exit briefing with VBA, VHA and NCA. The Committee will receive public comments from 10:00 a.m. to 10:15 a.m. After public comment, the Committee will continue to work on their report.

A sign-in sheet for those who want to give comments will be available at the meeting. Individuals who speak are invited to submit a 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Ms. Juanita Mullen or Mr. Lee Nelms, Department of Veterans Affairs, Center for Minority Veterans (00M), 810 Vermont Avenue NW., Washington, DC 20420, or email at *Juanita.mullen@va.gov* or *Lee.nelms@va.gov.* Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. Therefore, you should allow an additional 15 minutes before the meeting begins. Any member of the public wishing to attend or seeking additional information should contact Ms. Mullen or Mr. Nelms at (202) 461–6191 or by fax at (202) 273–7092.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel.

[FR Doc. 2013–27278 Filed 11–13–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Advisory Committee on Disability Compensation will meet on December 2–3, 2013, at the U.S.

Department of Veterans Affairs, Room 730, 810 Vermont Avenue NW., Washington, DC 20420. The sessions will begin at 8:30 a.m. and end at 4:30 p.m. on both days. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other VA benefits programs. Time will be allocated for receiving public comments in the afternoon. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Nancy Copeland, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration, Compensation Service, Regulation Staff (211D), 810 Vermont Avenue NW., Washington, DC 20420 or email at *nancy.copeland@va.gov*. Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. Therefore, you should allow an additional 15 minutes before the meeting begins. Any member of the public wishing to attend the meeting or seeking additional information should email Mrs. Copeland or contact her at (202) 461–9685.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel.

[FR Doc. 2013–27277 Filed 11–13–13; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 78 Thursday,

No. 220 November 14, 2013

Part II

Commodity Futures Trading Commission

17 CFR Parts 1, 3, 22, et al.

Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 22, 30, and 140

RIN 3038–AD88

Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is adopting new regulations and amending existing regulations to require enhanced customer protections, risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and auditing and examination programs for futures commission merchants (''FCMs'').

The regulations also address certain related issues concerning derivatives clearing organizations (''DCOs'') and chief compliance officers (''CCOs''). The final rules will afford greater assurances to market participants that: Customer segregated funds, secured amount funds, and cleared swaps funds are protected; customers are provided with appropriate notice of the risks of futures trading and of the FCMs with which they may choose to do business; FCMs are monitoring and managing risks in a robust manner; the capital and liquidity of FCMs are strengthened to safeguard their continued operations; and the auditing and examination programs of the Commission and the self-regulatory organizations (''SROs'') are monitoring the activities of FCMs in a prudent and thorough manner.

DATES: *Effective date:* January 13, 2014.

Compliance date: The applicable compliance dates are discussed in the section of the release titled ''III. Compliance Dates.''

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I. Background

A. General Statutory and Current Regulatory Structure

The protection of customers—and the safeguarding of money, securities or other property deposited by customers with an FCM—is a fundamental component of the Commission's disclosure and financial responsibility framework. Section 4d(a)(2) [1] of the Commodity Exchange Act (''the Act'' or ''the CEA'') [2] requires each FCM to segregate from its own assets all money, securities, and other property deposited by futures customers to margin, secure, or guarantee futures contracts and options on futures contracts traded on designated contract markets.[3] Section 4d(a)(2) further requires an FCM to treat and deal with futures customer funds as belonging to the futures customer, and prohibits an FCM from using the funds deposited by a futures customer to margin or extend credit to any person other than the futures customer that deposited the funds.

Section 4d(f) of the Act, which was added by section 724(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''),[4] requires each FCM to segregate from its own assets all money, securities, and other property deposited by Cleared Swaps Customers to margin Cleared Swaps.[5] Section 4d(f) also provides that an FCM shall treat and deal with all money, securities, and property of any swaps customer received to margin, guarantee, or secure a swap cleared by or through a DCO (including money, securities, or property accruing to the swaps customer as the result of such a swap) as belonging to the swaps customer. Section 4d(f) further provides that an FCM shall separately account for and not commingle with its own funds any money, securities, and property of a swaps customer, and shall not use such swaps customer's funds to margin, secure, or guarantee any trades or contracts of any swaps customer or person other than the person for whom the same are held.

The Commission adopted §§ 1.20 through 1.30, and § 1.32, to implement section 4d(a)(2) of the Act, and adopted part 22 to implement section 4d(f) of the Act. The purpose of these regulations is to safeguard funds deposited by futures customers and Cleared Swaps Customers, respectively.

Regulation 1.20 requires each FCM and DCO to separately account for and to segregate from its own proprietary funds all money, securities, or other property deposited by futures customers for trading on designated contract markets. In addition, all futures customer funds must be separately accounted for, and may not be commingled with the money, securities or property of an FCM or of any other person, or be used to secure or guarantee the trades, contracts or commodity options, or to secure or extend the credit, of any person other than the one for whom the same are held. Regulation 1.20 also provides that an FCM or DCO may deposit futures customer funds only with a bank or trust company, and for FCMs only, a DCO or another FCM. The funds must be deposited under an account name that clearly identifies the funds as belonging to the futures customers of the FCM or DCO and further shows that the funds are segregated as required by section 4d(a)(2) of the Act and Commission regulations. FCMs and DCOs also are required to obtain a written acknowledgment from a depository stating that the depository was informed that the funds deposited are customer funds being held in accordance with the Act.

FCMs and DCOs also are restricted in their use of futures customer funds. Regulation 1.22 prohibits an FCM from using, or permitting the use of, the

[1] 7 U.S.C. 6d(a)(2).

[2] 7 U.S.C. 1 et seq.

[3] The term ''futures customer'' is defined in § 1.3(iiii) of the Commission's regulations to include any person who uses an FCM as an agent in connection with trading in any contract for the purchase or sale of a commodity for future delivery or an option on such contract (excluding any proprietary accounts under § 1.3(y)). The Commission adopted the definition of the term ''futures customer'' on October 16, 2012 as part of the final rulemaking that amended existing Commission regulations to incorporate swaps. The **Federal Register** release adopting the final rules can be accessed at *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister101612.pdf.* Commission regulations can be found at 17 CFR Ch. 1.

[4] See Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm.*

[5] The term ''Cleared Swap'' is defined in section 1a(7) of the Act as any swap that is, directly or indirectly, submitted to and cleared by a DCO registered with the Commission. The term ''Cleared Swaps Customer'' is defined in § 22.1 as any person entering into a Cleared Swap, but excludes: (1) Any owner or holder of a Cleared Swaps Proprietary Account with respect to the Cleared Swaps in such account; and (2) A clearing member of a DCO with respect to Cleared Swaps cleared on that DCO.

futures customer funds of one futures customer to purchase, margin, or settle the trades, contracts, or commodity options of, or to secure or extend the credit of, any person other than such futures customer. In addition, § 1.22 provides that futures customer funds may not be used to carry trades or positions of the same futures customer other than in commodities or commodity options traded through the facilities of a contract market. Under § 1.20, an FCM or DCO may, however, for convenience, commingle and hold funds deposited as margin by multiple futures customers in the same account or accounts with one of the recognized depositories. An FCM or DCO also may invest futures customer funds in certain permitted investments under § 1.25.

Part 22 of the Commission's regulations, which governs Cleared Swaps, implements section 4d(f) of the Act and parallels many of the provisions in part 1 that address the manner in which, and the responsibilities imposed upon, an FCM may hold funds for futures customers trading on designated contract markets.[6] For example, § 22.2 requires an FCM to treat and to deal with funds deposited by Cleared Swaps Customers as belonging to such Cleared Swaps Customers and to hold such funds separately from the FCM's own funds. Regulation 22.4 provides that an FCM may deposit Cleared Swaps Customer Collateral with a bank, trust company, DCO, or another registered FCM.[7] Regulation 22.6 requires that the account holding the Cleared Swaps Customers Collateral must clearly identify the account as an account for Cleared Swaps Customers of the FCM engaging in Cleared Swaps and that the funds maintained in the account are subject to the segregation provisions of section 4d(f) of the Act and Commission regulations.

Regulation 22.2(d) also prohibits an FCM from using the Cleared Swaps Customer Collateral of one Cleared Swaps Customer to purchase, margin, or settle the Cleared Swaps or any other trade or contract, or to secure or extend credit, of any person other than such Cleared Swaps Customer. Further, § 22.2(c) permits an FCM to commingle the Cleared Swaps Customer Collateral of multiple Cleared Swaps Customers into one or more accounts, and § 22.2(e)(1) permits an FCM to invest Cleared Swaps Customer Collateral in accordance with § 1.25.

In addition to holding funds for futures customers transacting on designated contract markets and for Cleared Swaps Customers engaging in Cleared Swaps, FCMs also hold funds for persons trading futures contracts listed on foreign boards of trade. Section 4(b) of the Act provides that the Commission may adopt rules and regulations proscribing fraud and requiring minimum financial standards, the disclosure of risk, the filing of reports, the keeping of books and records, the safeguarding of the funds deposited by persons for trading on foreign markets, and registration with the Commission by any person located in the United States (''U.S.'') who engages in the offer or sale of any contract of sale of a commodity for future delivery that is made subject to the rules of a board of trade located outside of the U.S. Pursuant to the statutory authority of section 4(b), the Commission adopted part 30 of its regulations to address foreign futures and foreign option transactions.

The segregation provisions for funds deposited by foreign futures or foreign options customers to margin foreign futures or foreign options transactions under part 30, however, are significantly different from the requirements set forth in § 1.20 for futures customers trading on designated contract markets and part 22 for Cleared Swaps Customers engaging in Cleared Swaps.[8] Regulation 30.7 provides that an FCM may deposit the funds belonging to foreign futures or foreign options customers in an account or accounts maintained at a bank or trust company located in the U.S.; a bank or trust company located outside of the U.S. that has in excess of $1 billion of regulatory capital; an FCM registered with the Commission; a DCO; a member of a foreign board of trade; a foreign clearing organization; or a depository selected by the member of a foreign board of trade or foreign clearing organization. The account with the depository must be titled to clearly specify that the account holds funds belonging to the foreign futures or foreign options customers of the FCM that are trading on foreign futures markets. An FCM also is permitted to invest the funds deposited by foreign futures or foreign option customers in accordance with § 1.25.

However, unlike § 1.20 and part 22, which require an FCM to hold a sufficient amount of funds in segregation to meet the total account equities of all of the FCM's futures customers and Cleared Swaps Customers ''at all times'' (*i.e.,* the ''Net Liquidating Equity Method''), § 30.7 requires an FCM to maintain in separate accounts an amount of funds only sufficient to cover the margin required on open foreign futures contracts, plus or minus any unrealized gains or losses on such open positions, plus any funds representing premiums payable or received on foreign options (including any additional funds necessary to secure such options, plus or minus any unrealized gains or losses on such options) (*i.e.,* the ''Alternative Method''). Thus, under the part 30 Alternative Method an FCM is not required to maintain a sufficient amount of funds in such separate accounts to pay the full account balances of all of its foreign futures or foreign options customers at all times.

In addition to the segregation requirements of sections 4d(a)(2) and 4d(f) of the Act, and the secured amount requirements in part 30 of the Commission's regulations, FCMs also are subject to minimum net capital and financial reporting requirements that are intended to ensure that such firms meet their financial obligations in a regulated marketplace, including their financial obligations to customers and DCOs. Each FCM is required to maintain a minimum level of ''adjusted net capital,'' which is generally defined under § 1.17 as the firm's net equity as computed under generally accepted accounting principles, less all of the firm's liabilities (except for certain qualifying subordinated debt) and further excluding all assets that are not liquid or readily marketable. Regulation 1.17(c)(5) further requires an FCM to impose capital charges (*i.e.,* deductions) on certain of its liquid assets to protect against possible market risks in such assets.

FCMs also are subject to financial recordkeeping and reporting requirements. FCMs that carry customer accounts are required under § 1.32 to prepare a schedule each business day demonstrating their compliance with the segregation and secured amount requirements. Regulation 1.32 requires the calculation to be performed by noon

[6] The Commission approved the part 22 regulations on January 11, 2012, with an effective date of April 9, 2012. Compliance with the part 22 regulations was required by November 8, 2012. *See Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions,* 77 FR 6336 (Feb. 7, 2012).

[7] The term ''Cleared Swaps Customer Collateral'' is defined in § 22.2 to mean all money, securities, or other property (including accruals) received by an FCM or DCO from, for, or on behalf of a Cleared Swaps Customer to margin, guarantee, or secure a Cleared Swap.

[8] The term ''foreign futures or foreign options customer'' is defined in § 30.1 to mean any person located in the U.S., its territories or possessions who trades in foreign futures or foreign options, with the exception of accounts that are proprietary accounts under § 1.3. The term ''foreign futures or foreign option'' is defined in § 30.1 to generally mean any futures and/or options transactions executed on a foreign board of trade.

each business day, reflecting the account balances and open positions as of the close of business on the previous business day.

Each FCM also is required by § 1.10 to file with the Commission and with its designated self-regulatory organization (''DSRO'') monthly unaudited financial statements and an annual audited financial report.[9] Regulation 1.12 requires an FCM to file a notice with the Commission and with the firm's DSRO whenever, among other things, the firm: (1) Fails to maintain compliance with the Commission's capital requirements; (2) fails to hold sufficient funds in segregated or secured amount accounts to meet its regulatory requirements; (3) fails to maintain current books and records; or (4) experiences a significant reduction in capital from the previous month-end. The purpose of the regulatory notices is to alert the Commission and the firm's DSRO as early as possible to potential financial issues at the firm that may adversely impact the ability of the FCM to comply with its obligations to safeguard customer funds, or to meet its financial obligations to other FCMs or DCOs.

The statutory mandate to segregate customer funds—to treat them as belonging to the customer and not use the funds inappropriately—takes on greater meaning in light of the devastating events experienced over the last two years. Those events, which are discussed in greater detail below, demonstrate that the risks of misfeasance and malfeasance, and the risks of an FCM failing to maintain sufficient excess funds in segregation: (i) Put customer funds at risk; and (ii) are exacerbated by stresses on the business of the FCM. Many of those risks can be mitigated significantly by better risk management systems and controls, along with an increase in risk-oriented oversight and examination of the FCMs.

Determining what is a ''sufficient'' amount of excess funds in segregation for any particular FCM requires a full understanding of the business of that FCM, including a proper analysis of the factors that affect the actual amount of segregated funds held by the FCM relative to the minimum amount of segregated funds it is required to hold. Further, appropriate care must be taken to avoid withdrawing such excess funds at times of great stress to cover needs unrelated to the purposes for which excess segregated and secured funds are maintained. In times of stress, excess funds may look like an easy liquidity source to help cover other risks of the business; yet withdrawing such excess funds makes the funds unavailable when they may be most needed. The recent market events illustrate both the need to: (i) Require that care be taken about monitoring excess segregated and secured funds, and the conditions under and the extent to which such funds may be withdrawn; and (ii) place appropriate risk management controls around the other risks of the business to help relieve (A) the likelihood of an exigent event or, (B) if such an event occurs, the likelihood of a failure to prepare for such an event, which in either case could create pressures that result in an inappropriate withdrawal of customer funds.

Although the Commission's existing regulations provide an essential foundation to fostering a well-functioning marketplace, wherein customers are protected and institutional risks are minimized, recent events have demonstrated that additional measures are necessary to effectuate the fundamental purposes of the statutory provisions discussed above. Further, concurrently with the enhanced responsibilities for FCMs that were proposed by the Commission, the oversight and examination systems must be enhanced to mitigate risks and effectuate the statutory purposes.

B. Self-Regulatory Structure

The Commission's oversight structure provides that SROs are the frontline regulators of FCMs, introducing brokers (''IBs''), commodity pool operators, and commodity trading advisors. In 2000, Congress affirmed the Commission's reliance on SROs by amending section 3 of the Act to state: ''It is the purpose of this Act to serve the public interests through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission.''

As part of its oversight responsibility, an SRO is required to conduct periodic examinations of member FCMs' compliance with Commission and SRO financial and related reporting requirements, including the FCMs' holding of customer funds in segregated and secured accounts. The Commission oversees the SROs by examining them for the performance of their duties. The Commission recently has moved to conducting continuous reviews of the SROs' FCM examination program that includes a process whereby the Commission selects a small sample of the SRO's FCM work papers to review. In addition, the Commission also conducts limited-scope reviews of FCMs in ''for cause'' situations that are sometimes referred to as ''audits,'' but they are not full-scale audits as accountants commonly use that term.

In addition, because there are multiple SROs who share the same member FCMs, to avoid subjecting FCMs to duplicative examinations from SROs, the Commission has a permissive system that allows the SROs to agree how to allocate FCMs amongst them. An SRO who is allocated certain FCMs for such examination is referred to as the DSRO of those FCMs.

Under Commission regulations, FCMs must have their annual financial statements audited by an independent certified public accountant following generally accepted auditing standards as adopted in the U.S. (''U.S. GAAS''). As part of this certified annual report, the independent accountant also must conduct appropriate reviews and tests to identify any material inadequacies in systems and controls that could violate the Commission's capital, segregation or secured amount requirements. Any such inadequacies are required to be reported to the FCM's DSRO and to the Commission.

C. Futures Commission Merchant Insolvencies and Failures of Risk Management

The recent insolvencies of two FCMs demonstrate the need for revisions to the Commission's customer protection regime. On October 31, 2011, MF Global, Inc. (''MFGI''), which was dually-registered as an FCM with the Commission and as a securities broker-dealer (''BD'') with the U.S. Securities and Exchange Commission (''SEC''), was placed into a liquidation proceeding under the Securities Investor Protection Act by the Securities Investor Protection Corporation (''SIPC'').

The trustee appointed to oversee the liquidation of MFGI reported a potential $900 million shortfall of funds necessary to repay the account balances due to customers trading futures on designated contract markets, and an approximately $700 million shortfall in funds immediately available to repay the account balances of customers trading on foreign futures markets.[10] The shortfall in customer segregated accounts was attributed by the MFGI Trustee to significant transfers of funds

[9] The term ''self-regulatory organization'' is defined by § 1.3 to mean a contract market, a swap execution facility, or a registered futures association. A DSRO is the SRO that is appointed to be primarily responsible for conducting ongoing financial surveillance of an FCM that is a member of two or more SROs under a joint audit agreement submitted to and approved by the Commission under § 1.52.

[10] *See Report of the Trustee's Investigation and Recommendations, In re MF Global Inc.,* No. 11–2790 (MG) SIPA (Bankr. S.D.N.Y. June 4, 2012).

out of the customer accounts that were used by MFGI for various purposes other than to meet obligations to or on behalf of customers.

In addition, the Commission filed a civil injunctive complaint in federal district court on July 10, 2012, against Peregrine Financial Group, Inc. (''PFGI''), a registered FCM and its Chief Executive Officer (''CEO'') and sole owner, Russell R. Wasendorf, Sr., alleging that PFGI and Wasendorf, Sr. committed fraud by misappropriating customer funds, violated customer fund segregation laws, and made false statements regarding the amount of funds in customer segregated accounts in financial statements filed with the Commission. The complaint states that in July 2012 during an NFA examination PFGI falsely represented that it held in excess of $220 million of customer funds when in fact it held approximately $5.1 million.[11]

Recent incidents also have demonstrated the value of establishing robust risk management systems within FCMs and enhanced early warning systems to detect and address financial and regulatory issues. In particular, problems that arise through an FCM's non-futures-related business can have a direct and significant impact on the FCM's financial condition, raising questions as to whether the FCM will be able to protect customer funds[12] and maintain the minimum financial requirements mandated by the Act and Commission regulations.[13]

These recent incidents highlighted weaknesses in the customer protection regime prescribed in the Commission's regulations and through the self-regulatory system. In particular, questions have arisen on the requirements surrounding the holding and investment of customer funds, including the ability of FCMs to withdraw funds from futures customer segregated accounts and part 30 secured accounts. Additionally, the incidents have underscored the need for additional safeguards—such as robust risk management systems, strengthened early-warning systems surrounding margin and capital requirements, and enhanced public disclosures—to promote the protection of customer funds and to minimize the systemic risk posed by certain actions of market participants. Further questions have arisen on the system of audits and examinations of FCMs, and whether the system functions adequately to monitor FCMs' activities, verify segregated funds and secured amount balances, and detect fraud.

D. Recent Commission Rulemakings and Other Initiatives Relating to Customer Protection

Since late 2011, the Commission has promulgated rules directly impacting the protection of customer funds. The Commission also has studied the current regulatory framework surrounding customer protection, particularly in light of the recent incidents outlined above, in order to identify potential enhancements to the systems and Commission regulations protecting customer funds. The Commission's efforts have been informed, in part, by efforts undertaken by industry participants. The proposed rule amendments were informed by the efforts detailed below.

In December 2011, the Commission adopted final rule amendments revising the types of investments that an FCM or DCO can make with customer funds under § 1.25, for the purpose of affording greater protection for such funds.[14] Among other changes to §§ 1.25 and 30.7, the final rule amendments removed from the list of permitted investments: (1) Corporate debt obligations not guaranteed by the U.S. Government; (2) foreign sovereign debt; and (3) in-house and affiliate transactions.

In adopting the amendments to § 1.25, the Commission was mindful that customer segregated funds must be invested by FCMs and DCOs in a manner that minimizes their exposure to credit, liquidity, and market risks both to preserve their availability to customers and DCOs, and to enable investments to be quickly converted to cash at a predictable value in order to avoid systemic risk. The amendments are consistent with the general prudential standard contained in § 1.25, which provides that all permitted investments must be ''consistent with the objectives of preserving principal and maintaining liquidity.''

The Commission also approved final regulations that require DCOs to collect initial customer margin from FCMs on a gross basis.[15] Under the final regulations, FCMs are no longer permitted to offset one customer's margin requirement against another customer's margin requirements and deposit only the net margin collateral with the DCO. As a result of the rule change, a greater portion of customer initial margin is posted by FCMs to the DCOs.

The Commission also approved regulations that impose requirements on FCMs and DCOs regarding the treatment of Cleared Swaps and Cleared Swaps Customer Collateral.[16] Under the traditional futures model, DCOs hold an FCM's futures customers' funds on an omnibus basis in a futures customer account. In the event of a double default, which is a situation where a futures customer defaults on its obligation to its clearing FCM and the loss is so great that the clearing FCM defaults on its obligation to the DCO, the DCO is permitted to use the funds held in the futures customers' omnibus account to cover the loss of the defaulting futures customer before applying its own capital or the guaranty fund contributions of non-defaulting FCM members.

The Commission approved an alternative model for Cleared Swaps. Under the ''LSOC'' (legal segregation with operational comingling) model, DCOs may hold Cleared Swaps Customer Collateral on an omnibus basis in a Cleared Swaps Customer Account.[17] However, unlike with the futures model, following a double default the DCO would only be permitted to access the collateral of the defaulting Cleared Swaps Customers; it would not be permitted to use the collateral of non-defaulting Cleared Swaps Customers to cover a defaulting Cleared Swaps Customer's losses.

Pursuant to section 724(c) of the Dodd-Frank Act, the final rule on segregation for uncleared swaps, approved by the Commission on October 30, 2013, implements the

[11] Complaint, *U.S. Commodity Futures Trading Commission* v. *Peregrine Financial Group, Inc., and Russell R. Wasendorf, Sr.,* No. 12–cv–5383 (N.D. Ill. July 10, 2012). A copy of the Commission's complaint has been posted to the Commission's Web site.

[12] The Commission notes that the definition of ''customer funds'' in § 1.3(gg) includes funds held for customers trading on designated contract markets and customers engaging in cleared swap transactions. However, as used in this notice, unless otherwise specified, the term ''customer funds'' also includes funds held for customers trading on foreign markets pursuant to part 30 of the Commission's regulations.

[13] *See, e.g.,* Edward Krudy, Jed Horowitz and John McCrank, ''Knight's Future in Balance After Trading Disaster,'' Reuters (Aug. 3, 2012), available at *http://in.reuters.com/article/2012/08/03/knightcapital-loss-idINL2E8J27QE20120803* (noting that a software issue caused the firm to incur a $440 million trading loss, which represented much of the firm's capital).

[14] *See* Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 76 FR 78776 (Dec. 19, 2011).

[15] *See* Commission Regulation 39.12(g)(8)(i) and Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334 (Nov. 8, 2011).

[16] *See* 77 FR 6336 (Feb. 7, 2012).

[17] The term ''Cleared Swaps Customer Account'' is defined in § 22.1 and generally refers to an account that an FCM or a DCO maintains at a permitted depository for the Cleared Swaps (and related collateral) of Cleared Swaps Customers.

requirements of section 4s(l) of the CEA that Swap Dealers (''SDs'') and Major Swap Participants (''MSPs'') notify their counterparties that such counterparties have a right to require that any initial margin which they post to guarantee uncleared swaps be segregated at an independent custodian. Where the counterparty elects segregation for its initial margin, the account must be held at a custodian that is independent of both the counterparty and the SD or MSP.

The Commission also included customer protection enhancements in a final rulemaking for designated contract markets issued in June 2012. These enhancements codify into regulations staff guidance on minimum requirements for SROs regarding their financial surveillance of FCMs.[18] The regulations require a DCM to have arrangements and resources for effective rule enforcement and trade and financial surveillance programs, including the authority to collect information and examine books and records of members and market participants. The regulations also establish minimum financial standards for both member FCMs and IBs and non-intermediated market participants. The Commission expressly noted in the preamble of the **Federal Register** release that ''a DCM's duty to set financial standards for its FCM members involves setting capital requirements, conducting surveillance of the potential future exposure of each FCM as compared to its capital, and taking appropriate action in light of the results of such surveillance.'' [19] Further, the rules mandate that DCMs adopt rules for the protection of customer funds, including the segregation of customer and proprietary funds, the custody of customer funds, the investment standards for customer funds, intermediary default procedures and related recordkeeping.

In addition to the rulemaking efforts outlined above, the Commission sought additional information through a series of roundtables and other meetings. On February 29 and March 1, 2012, the Commission solicited comments and held public roundtables to solicit input on customer protection issues from a broad cross-section of the futures industry, including market participants, FCMs, DCOs, SROs, securities regulators, foreign clearing organizations, and academics.[20] The roundtable focused on issues relating to the advisability and practicality of modifying the segregation models for customer funds; alternative models for the custody of customer collateral; enhancing FCM controls over the disbursement of customer funds; increasing transparency surrounding an FCM's holding and investment of customer funds; and lessons learned from recent commodity brokerage bankruptcy proceedings.

The Commission also hosted a public meeting of the Technology Advisory Committee (''TAC'') on July 26, 2012.[21] Panelists and TAC members discussed potential technological solutions directed at enhancing the protection of customer funds by identifying and exploring technological issues and possible solutions relating to the ability of the Commission, SROs and customers to verify the location and status of funds held in customer segregated accounts.

Commission staff hosted an additional roundtable on August 9, 2012, to discuss SRO requirements for examinations of FCMs and Commission oversight of SRO examination programs. The roundtable also focused on the role of the independent public accountant in the FCM examination process, and proposals addressing various alternatives to the current system for segregating customer funds.

The Commission also considered industry initiatives to enhance customer protections. On February 29, 2012, the Futures Industry Association (''FIA'') initiated steps to educate customers on the extent of the protections provided under the current regulatory structure. FIA issued a list of Frequently Asked Questions (''FAQ'') prepared by members of the FIA Law and Compliance Division addressing the basics of segregation, collateral management and investments, capital requirements and other issues for FCMs and joint FCM/BDs, and clearinghouse guaranty funds.[22] The FAQ is intended to provide existing and potential customers with a better understanding of the risks of engaging in futures trading and a clear explanation of the extent of the protections provided to customers and their funds under the Act and Commission regulations.

FIA also issued a series of initial recommendations for the protection of customer funds.[23] The recommendations were prepared by the Financial Management Committee, whose members include representatives of FIA member firms, DCOs and depository institutions. The initial recommendations address enhanced disclosure on the protection of customer funds, reporting on segregated funds balances by FCMs, FCM internal controls surrounding the holding and disbursement of customer funds, and revisions to part 30 regulations to make the protections comparable to those provided for customers trading on designated contract markets.

On July 13, 2012, the Commission approved new FCM financial requirements proposed by the National Futures Association (''NFA'').[24] The NFA Financial Requirements Section 16 and its related Interpretive Notice entitled ''NFA Financial Requirements Section 16: FCM Financial Practices and Excess Segregated Funds/Secured Amount Disbursements'' (collectively referred to as ''the Segregated Funds Provisions'') were developed in consultation with Commission staff.

NFA's Segregated Funds Provisions require each FCM to: (1) Maintain written policies and procedures governing the deposit of the FCM's proprietary funds (*i.e.,* excess or residual funds) in customer segregated accounts and part 30 secured accounts; (2) maintain a targeted amount of excess funds in segregate accounts and part 30 secured accounts; (3) file on a daily basis the FCM's segregation and part 30 secured amount computations with NFA; (4) obtain the approval of senior management prior to a withdrawal that is not for the benefit of customers whenever the withdrawal equals 25 percent or more of the excess segregated or part 30 secured amount funds; (5) file a notice with NFA of any withdrawal that is not for the benefit of customers whenever the withdrawal equals 25 percent or more of the excess segregated or part 30 secured amount funds; (6) file detailed information regarding the depositories holding customer funds and the investments made with customer funds as of the 15th day (or

[18] *See* Core Principles and Other Requirements for Designated Contract Markets, 77 FR 36612 (June 19, 2012).

[19] *Id.* at 36646.

[20] Further information on the public roundtable, including video recordings and transcripts of the discussions, have been posted to the Commission's Web site. *See http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff022912 (relating to Feb. 29, 2012); http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff030112 (relating to Mar. 1, 2012).*

[21] Additional information, including documents submitted by meeting participants, has been posted to the Commission's Web site. *See http://www.cftc.gov/PressRoom/Events/opaevent_tac072612.*

[22] The FIA's release addressing FAQs on the protection of customer funds is accessible on the FIA's Web site at *http://www.futuresindustry.org/downloads/PCF-FAQs.PDF.*

[23] The FIA's initial recommendations are accessible on the FIA's Web site at *http://www.futuresindustry.org/downloads/Initial_Recommendations_for_Customer_Funds_Protection.pdf.*

[24] For more information relating to the new FCM financial requirements, see *http://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4072.*

the next business day if the 15th is not a business day) and the last business day of each month; and (7) file additional monthly net capital and leverage information with NFA.

Significantly, NFA's Segregated Funds Provisions also require FCMs to compute their part 30 secured amount requirement and compute their targeted excess part 30 secured funds using the same Net Liquidating Equity Method that is required by the Act and Commission regulations for computing the segregation requirements for customers trading on U.S. contract markets under section 4d of the Act. FCMs are not permitted under the NFA rules to use the Alternative Method to compute the part 30 secured amount requirement. The failure of an FCM to maintain its targeted amount of excess part 30 funds computed using the Net Liquidating Equity Method may result in NFA initiating a Membership Responsibility Action against the firm.

In addition, in setting the target amount of excess funds, the FCM's management must perform a due diligence inquiry and consider various factors relating, as applicable, to the nature of the FCM's business, including the type and general creditworthiness of the FCM's customers, the trading activity of the customers, the types and volatility of the markets and products traded by the FCM's customers, and the FCM's own liquidity and capital needs. The FCM's Board of Directors (or similar governing body), CEO or Chief Financial Officer (''CFO'') must approve in writing the FCM's targeted residual amount, any changes thereto, and any material changes in the FCM's written policies and procedures.

The NFA and CME Group Inc. (''CME'') also adopted rules requiring FCMs to instruct each depository holding futures customer funds to report such balances on a daily basis to the NFA or CME, respectively.[25] Initially, the NFA and CME retained the services of a third-party vendor which received account balance information directly from certain banks, custodians of securities, and money market funds, and passed such information on to the NFA and CME. The CME, however, took over the role of the third-party vendor effective October 29, 2013 and receives account information directly from all depositories holding futures customer funds. The CME also provides NFA with daily account balance information for the FCMs that NFA is the DSRO. The same process applies to the FCM's customer secured account(s) held for customers trading on foreign futures exchanges, and for the FCM's Cleared Swaps Customers engaging in Cleared Swaps.

In addition, NFA and CME expanded their oversight of FCMs under the amended rules, by developing programs that compare the daily balances reported by the depositories with the balances reported by the FCMs in their daily segregation reports. An immediate alert is generated for any material discrepancies.

E. The Proposed Amendments

The incidents outlined above, coupled with the information generated through the recent efforts undertaken by the Commission and industry participants, demonstrate the need for new rules and amendments to existing rules. In particular, an examination of FCM business operations—including the non-futures business of FCMs—and the currently regulatory framework, evince a need for enhanced customer protections, risk management programs, disclosure requirements, and auditing and examination programs. To address these needs, the Commission issued a Notice of Proposed Rulemaking (''NPRM'') on November 14, 2012 (''the Proposal'') containing a series of amendments to enhance customer protections.[26]

The Proposal addressed six main issues. First, recognizing problems surrounding the treatment of customer segregated funds and foreign futures or foreign options secured amounts, the Commission proposed to amend several components of parts 1, 22, and 30 of the Commission's regulations to provide greater certainty to market participants that the customer funds entrusted to FCMs will be protected. Second, to address shortcomings in the risk management of FCMs, the Commission proposed a new § 1.11 that establishes robust risk management programs. Third, the Commission determined that the current regulatory framework should be re-oriented to implement a more risk-based, forward-looking perspective, affording the Commission and SROs with read-only access to accounts holding customer funds and additional information on depositories and the customer assets held in such depositories. Fourth, given the difficulties that can arise in an FCM's business, and the direct and significant impact on the FCM's regulatory capital that can result from such difficulties, the Commission proposed to amend § 1.17(a)(4) to ensure that an FCM's capital and liquidity are sufficient to safeguard the continuation of operations at the FCM. Fifth, to effect the change in orientation needed in FCM examinations programs, as well as to assure quality control over program contents, administration and oversight, the Commission proposed to amend § 1.52, which, among other things, addresses the formation of Joint Audit Committees and the implementation of Joint Audit Programs. And sixth, recognizing the need to increase the information provided to customers concerning the risks of futures trading and the FCMs with which they may choose to conduct business, the Commission proposed amendments to § 1.55 that enhance the disclosures provided by FCMs.

II. Comments on the Notice of Proposed Rulemaking

The Proposal, aimed at: (1) Amending and enhancing its current customer protection regime; (2) imposing risk management requirements on FCMs; (3) requiring additional ''early warning'' notices from FCMs regarding material changes in their operations or financial condition; (4) imposing additional liquidity requirements for FCMs; (5) revising the examination process of FCMs by both the SROs and public accountants; and (6) requiring additional disclosures to customers concerning the risks of futures trading and the FCMs that hold customer funds. The Commission extended the initial 60-day comment period for approximately 30 additional days at the request of various commenters and in order to provide interested parties with an additional opportunity to comment on the proposal.[27] The comment period closed on February 15, 2013.

During the comment period the Commission held two public roundtables to solicit input on issues related to the proposal from a cross-section of the futures industry, including market participants, FCMs, DCOs, SROs, securities regulators, foreign clearing organizations, and academics. The Commission received more than 120 written submissions on the proposing release from a range of commenters.[28] Commission staff also met with representatives from at least eight of the commenters and other

[25] *See* NFA Financial Requirements Rules, Section 4. Financial Requirements and Treatment of Customer Property, and CME Rule 971, Segregation, Secured, and Cleared Swaps Customer Account Requirements.

[26] 77 FR 67866 (Nov. 14, 2012).

[27] 78 FR 4093 (Jan. 18, 2013).

[28] The written submissions from the public are available in the comment file on *www.cftc.gov*. They include, but are not limited to, those listed in the table in Appendix 1 to this release. In citing to the comments received during the discussion of the comments in this Section, the Commission used the abbreviations set forth in the table in Appendix 1.

members of the public. Commenters represented a broad spectrum of industry participants, trade organizations, law firms, accounting firms and self-regulatory organizations. The majority of commenters supported the overall principles proposed by the Commission although many raised concerns or offered suggestions regarding certain proposal specifics.

The Commission also held a meeting of the Agricultural Advisory Committee on July 25, 2013, and included in the agenda a discussion of the Proposal. The transcript of the Agricultural Advisory Committee meeting is included in the comment file to the Proposal, and the Commission has considered those comments in finalizing the regulations.

The Commission has carefully considered the comments received and is adopting the Proposal herein subject to various amendments that address certain concerns raised or suggestions made by commenters. Each section of the final rules, including any relevant revisions to the corresponding section of the Proposal, is discussed in greater detail in the following sections.

A. § 1.10: Financial Reports of Futures Commission Merchants and Introducing Brokers

Regulation 1.10 requires each FCM to file with the Commission and with the firm's DSRO an unaudited financial report each month. The financial report must be prepared using Form 1–FR–FCM. An FCM that is dually-registered as a BD, however, may file a Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934 (''FOCUS Report'') in lieu of the Form 1–FR–FCM. Each FCM also is required to file with the Commission and with its DSRO an annual financial report certified by an independent public accountant.

The unaudited monthly and certified annual financial reports are required to contain basic financial statements, including a statement of financial condition, a statement of income (loss), and a statement of changes in ownership equity. The financial reports also are required to include additional schedules designed to address specific regulatory objectives to demonstrate that the FCM is in compliance with minimum capital and customer funds segregation requirements. These additional schedules include a statement of changes in liabilities subordinated to claims of general creditors, a statement of the computation of the minimum capital requirements (''Capital Computation Schedule''), a statement of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges (''Segregation Schedule''), and a statement of secured amounts and funds held in separate accounts for foreign futures and foreign options customers (''Secured Amount Schedule''). In addition, the certified annual report must contain a reconciliation of material differences between the Capital Computation Schedule, the Segregation Schedule, and the Secured Amount Schedule contained in the certified annual report and the unaudited monthly report for the FCM's year-end month.

1. Amendments to the Segregation and Secured Amount Schedules With Respect to the Reporting of Residual Interest

The Segregation Schedule and the Secured Amount Schedule generally indicate, respectively, (1) The total amount of funds held by the FCM in segregated or secured accounts; (2) the total amount of funds that the FCM must hold in segregated or secured accounts to meet its regulatory obligations to futures customers and foreign futures or foreign options customers; and (3) whether the firm holds excess segregated or secured funds in the segregated or secured accounts as of the reporting date. FCMs also deposit proprietary funds into customer segregated and secured accounts to protect against becoming undersegregated or undersecured by failing to hold a sufficient amount of funds in such accounts to meet the regulatory requirements. This cushion of proprietary funds is referred to as the FCM's ''residual interest'' in the customer segregated and secured accounts.

The Commission proposed to amend § 1.10 to require each FCM to also disclose in the Segregation Schedule and in the Secured Amount Schedule its targeted amount of ''residual interest'' that the FCM seeks to maintain in customer segregated accounts and secured accounts as computed under § 1.11.[29] As more fully discussed in section II.B. below, new § 1.11(e)(3)(i)(D) requires the senior management of each FCM that carries customer funds to perform appropriate due diligence in setting the amount of the residual interest. Such due diligence must consider the nature of the FCM's business including the type and general creditworthiness of its customer base, the types of markets and products traded by the firm's customers, the proprietary trading activities of the FCM, the volatility and liquidity of the markets and products traded by the customers and by the FCM, the FCM's own liquidity and capital needs, historical trends in customer segregation and secured account funds balances, and historical trends in customer debits and margin deficits (*i.e.,* undermargined amounts).[30] The FCM also is required to maintain policies and procedures establishing the targeted amount of residual interest that the FCM seeks to maintain as its residual interest in the segregated and secured accounts. The FCM's due diligence and policies and procedures must be designed to reasonably ensure that the FCM maintains the targeted residual interest amount and remains in compliance with its segregation requirements at all times.[31]

The disclosure of the targeted amount of the FCM's residual interest in segregated or secured accounts will allow the Commission and the FCM's DSRO to determine whether the FCM actually maintains funds in segregated and secured accounts in amounts sufficient to cover the respective targeted residual interest amounts. If a firm does not maintain sufficient funds to cover the targeted residual interest amounts, the Commission and/or DSRO will take appropriate steps to assess whether the FCM is experiencing financial issues that may indicate potential threats to the overall safety of customer funds. The disclosure of the amounts of the FCM's targeted residual interest also will enhance the Commission's and DSROs' surveillance of FCMs by providing information that will allow for the assessment of the size of the targeted residual interest relative to both the total funds held in segregation or secured accounts and to

[29] The Commission also proposed to revise the title of the ''Secured Amount Schedule'' by adding the term ''30.7 Customer'' to specify that the secured amount will include both U.S.-domiciled and foreign-domiciled customers consistent with the proposed amendments to part 30 of the Commission Regulations discussed in Section II.R. below. No comments were received regarding the revisions to the title of the ''Secured Amount Schedule,'' and the Commission is adopting the revisions as proposed.

[30] The NPRM explained that a margin deficit occurs when the value of the customer funds for a customer's account is less than the total amount of collateral required by DCOs for that account's contracts. As explained further in the discussion in sections II.G.9., II.Q., and II.R., the term ''undermargined amount,'' as defined in §§ 1.22(c)(1), 22.2(f)(6)(i), and 30.7(f)(1)(ii)(A), is used in place of the term ''margin deficit'' in the final rule.

[31] The NFA adopted a similar amendment to its rules, mandating that FCMs maintain written policies and procedures identifying a target amount that the FCM will seek to maintain as its residual interest in customer segregated and secured accounts. *See* NFA Notice I–12–14 (July 18, 2012), available at *http://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4072.*

the size of the targeted residual interest maintained by other comparable FCMs. This information will assist the Commission and DSROs in the overall risk assessment of the FCMs, including the assessment of the potential risk that a firm may become undersegregated or undersecured. This additional information will further enhance the Commission's and DSROs' overall ability to protect customer funds.

The Commission also proposed to amend the Segregation Schedule and the Secured Amount Schedule to require each FCM filing such schedules to disclose the sum of the outstanding margin deficits (*i.e.,* undermargined amounts) as of the reporting date. The purpose of this disclosure was to demonstrate that the FCM's residual interest in the segregated and secured account exceeded the respective customer margin deficits (*i.e.,* undermargined amounts) as proposed in §§ 1.22 and 1.23.

The Commission has considered the proposal and has determined not to amend the Segregation Schedule and Secured Amount Schedule to require the disclosure of the undermargined amounts. As further discussed in sections II.G.9. and II.R. below, the Commission is revising the proposed amendments to § 1.22 that would have required an FCM to maintain at all times a residual interest in segregated or secured accounts in excess of its undermargined amounts. The final regulations being adopted in § 1.22, § 22.2, and § 30.7 will require computations as of different points in time than that of the computations reflected on the Segregation Schedule and the Secured Amount Schedule, which are prepared as of the close of business each day. The reporting of the undermargined amount information on the Segregation and Secured Amount Schedules would not be accurate as the firm's customers may not be undermargined, or may be less undermargined, at the time the undermargined amount calculations are required to be performed due, for example, to customers meeting margin calls.[32]

The Commission has considered the comments and is adopting the amendments to § 1.10 as proposed, with the above revisions to the Segregation Schedule and the Secured Amount Schedule.

2. New Cleared Swaps Segregation Schedules

The Commission proposed to amend § 1.10(d) and to revise the Form 1–FR–FCM to adopt a new ''Statement of Cleared Swap Customer Segregation Requirements and Funds in Cleared Swap Customer Accounts Under Section 4d(f) of the Act'' (''Cleared Swaps Segregation Schedule'').[33] The Commission proposed the Cleared Swaps Segregation Schedule to further implement section 724(a) of the Dodd-Frank Act. Section 724(a) of the Dodd-Frank Act amended section 4d of the Act by adding a new paragraph (f) to require an FCM to separately account for and segregate from its own assets Cleared Swaps Customers Collateral deposited by Cleared Swaps Customers. Section 4d(f) of the Act also requires FCMs to treat and deal with all the Cleared Swaps Customer Collateral deposited by a Cleared Swaps Customer as belonging to such customer, and prohibits an FCM from, with certain exceptions, using the Cleared Swaps Customer Collateral to margin, secure or guarantee the Cleared Swaps of any person other than the Cleared Swaps Customer who deposited the Cleared Swaps Customer Collateral. FCMs currently prepare a schedule comparable to the Cleared Swaps Segregation Schedule for Cleared Swaps under applicable contract market or NFA rules, and the Commission's proposal would codify existing practices.

The Commission received one comment on the proposed Cleared Swaps Segregation Schedule. The Students at the SUNY Buffalo Law School supported the development of the Cleared Swaps Segregation Schedule.[34] The Commission has considered the comment and has determined to adopt the Cleared Swaps Segregation Schedule as proposed.[35]

In addition, § 1.10 currently provides that the Commission will treat the monthly Form 1–FR–FCM reports, and monthly FOCUS Reports filed in lieu of the Forms 1–FR–FCM, as exempt from mandatory public disclosure for purposes of the Freedom of Information Act and the Government in the Sunshine Act.[36] Regulation 1.10(g)(2) provides, however, that the following information in Forms 1–FR–FCM, and the same or equivalent information in FOCUS Reports filed in lieu of Forms 1–FR–FCM, are publicly available: The amount of the FCM's adjusted net capital; the amount of the FCM's minimum net capital requirement under § 1.17; and the amount of its adjusted net capital in excess of its minimum net capital requirement. In addition, § 1.10(g)(2) further provides that the FCM's Statement of Financial Condition in the certified annual financial report and the Segregation Schedule and Secured Amount Schedule are public documents.

The Commission proposed to amend § 1.10(g)(2)(ii) to add the Cleared Swaps Segregation Schedule to the list of documents that are publicly available. The only comment that the Commission received regarding making the Cleared Swaps Segregation Schedule public was received from students at the SUNY Buffalo Law School. The students at the SUNY Buffalo Law School supported the development and implementation of the Cleared Swaps Segregation Schedule as a regulatory tool for the Commission to receive additional information and to provide greater protection to customer funds.[37] The students, however, also stated that the public disclosure of the Cleared Swaps Segregation Schedule and other financial information could

[32] The Commission notes, however, that it will receive notice under § 1.12 from an FCM if the firm maintains residual interest in the segregated or secured amount accounts that is less than the sum of the firm's undermargined amount at the point in time the FCM is required to maintain such undermargined amounts under § 1.22, § 22.2, and § 30.7. The notice provision will alert the Commission and the FCM's DSRO to the fact that the undermargined amounts exceed the firm's residual interest in the accounts, and the Commission and DSRO can monitor the firm's actions to restore its residual interest to a level that is above the undermargined amounts, or take other actions as appropriate. *See* section II.C. below.

[33] The Commission previously proposed a Cleared Swaps Segregation Schedule as part of its proposed regulations to adopt capital requirements for swap dealers and major swap participants. *See* Capital Requirements of Swap Dealers and Major Swap Participants, 76 FR 27802 (May 12, 2011). The Commission re-proposed the schedule as part of the Proposal in light of the Commission's decision to revise the schedule by requiring FCMs to separately disclose their targeted residual interest in Cleared Swaps Customer Accounts and the sum of margin deficits (*i.e.,* undermargined amounts) for such accounts. The Commission also has adopted new regulations requiring FCMs to hold in segregated accounts funds received from customers engaging in Cleared Swaps to margin, secure or guarantee their Cleared Swaps in accordance with section 4d(f) of the Act. *See* 77 FR 6336 (Feb. 7, 2012).

[34] SUNY Buffalo Comment Letter at 7 (Mar. 19, 2013).

[35] The Commission will revise the Cleared Swaps Segregation Schedule consistent with the revisions to the Segregation Schedule and Secured Amount Schedule discussed in section II.A.1. to remove the requirement for the firm to disclose the amount of the margin deficits as of the close of business on the previous business day. In addition, § 1.10(h) provides that a dually-registered FCM/BD may file a FOCUS Report in lieu of the Form 1–FR–FCM provided that all information that is required to be included in the Form 1–FR–FCM is included in the FOCUS Report. Currently, dual-registrant FCM/BDs include a Segregation Schedule and a Secured Amount Schedule in the FOCUS Report filings as supplemental schedules. Dual-registrant FCM/BDs that have Cleared Swaps Customers will also have to include a Cleared Swaps Segregation Schedule to their Focus Report filings.

[36] 5 U.S.C. 552.

[37] SUNY Buffalo Comment Letter at 8 (Mar. 19, 2013).

cause public panic in certain situations.[38] They cited MFGI and Bear Stearns as examples of how public panic can rapidly accelerate a company's collapse by exacerbating the effects of financial injuries that might otherwise be manageable.[39]

The Commission notes that the monthly Segregation Schedules and Secured Amount Schedules have been available to the public for many years and provide important information that allows customers to monitor the financial condition of FCMs. As noted in the Proposal, the Commission believes that making the Cleared Swaps Segregation Schedule publicly available will benefit customers and potential customers by providing greater transparency on the status of the Cleared Swaps Customer Collateral held by FCMs. This disclosure allows customers and other members of the public to review an FCM's compliance with its regulatory obligations to safeguard customer funds. The disclosure of the Cleared Swaps Segregation Schedule also will provide a certain amount of detail as to how the FCM holds Cleared Swaps Customer Collateral, which customers and potential customers will be able to assess as part of their risk management process.

The disclosure of the status of an FCM's compliance with its obligation to segregate customer funds, coupled with the additional firm risk disclosures that the Commission proposed in § 1.55 (and is adopting in relevant part herein as discussed in detail in section II.P. below), will provide customers with greater transparency regarding the risks of entrusting their funds and engaging in transactions with particular FCMs. The Commission believes that these benefits to customers outweigh any potential adverse market impact which, in any event, has not been shown to be an issue based on the Commission's experience in making FCMs' Segregation Schedules and Secured Amount Schedules publicly available. The Commission has, therefore, determined to adopt the amendments to § 1.10(g)(2) as proposed.

3. Amendments to Form 1–FR–FCM

The Commission proposed to amend several statements in the Form 1–FR–FCM. The Commission proposed to amend the Statement of Financial Condition by adding a new line item 1.D. Line 1 currently separately details: (1) The amount of funds that the FCM holds in segregated accounts for customers trading on designated contract markets (Line 1.A.); (2) the amount of funds held in segregation for dealer options (Line 1.B.); and (3) the amount of funds held in secured accounts for foreign futures and foreign option customers (Line 1.C.).

Proposed line item 1.D. would set forth the amount of funds held by the FCM in segregated accounts for Cleared Swaps Customers. This amendment is necessary due to the adoption of the part 22 regulations, which requires the segregation of Cleared Swaps Customer Collateral and the proposed adoption of the Cleared Swaps Segregation Schedule as part of the Form 1–FR–FCM.[40]

The Commission also proposed to amend the Statement of Financial Condition by adding a new line item 22.F., which would require the separate disclosure of the FCM's liability to Cleared Swaps Customers. The proposed amendments to disclosure the total amount of funds held by the FCM for Cleared Swaps Customers, and the FCM's total obligation to Cleared Swaps Customers, is consistent with the reporting required on the Form 1–FR–FCM for customers trading on designated contract markets.

The Commission also proposed to revise line item 27.J. of the Statement of Financial Condition to require an FCM to disclose separately its obligation to retail forex customers. Currently, an FCM's obligation to retail forex customers is included with other miscellaneous liabilities and reported under current line item 27.J. ''Other.'' The separate reporting of an FCM's retail forex obligation will provide greater transparency on the Statement of Financial Condition regarding the firm's obligations to its retail counterparties in off-exchange foreign currency transactions, and is appropriate given the Commission's direct jurisdiction over such activities when conducted by an FCM under section 2(c) of the Act.[41]

NFA filed the only comment addressing the proposed amendments to the Statement of Financial Condition. NFA noted its full support of the proposed amendments to line item 27.J of the Statement of Financial Condition contained in Form 1–FR–FCM, and further requested that the Commission consider amending the asset section of the Statement of Financial Condition of Form 1–FR–FCM to require an FCM or Retail Foreign Exchange Dealer (''RFED'') to report the total funds on deposit to cover its obligations to retail forex customers as required by Commission Regulation 5.8.[42] NFA stated that this revision would result in more accurate reporting and is consistent with the reporting for customer segregated funds.[43]

The Commission has considered the comment and has determined to adopt the amendments as proposed. The Commission also is revising the Statement of Financial Condition in the Form 1–FR–FCM in response to the NFA's comment to include a new line item to require FCMs and RFEDs to separately disclose the assets held in qualifying accounts in excess of the firms' obligations to retail forex customers as required by Commission Regulation 5.8.

Regulation 5.8 requires each FCM and RFED offering or engaging in retail forex transactions to hold, at all times, assets of the type permissible in § 1.25 in an amount that exceeds the FCM's or RFED's total obligation to its retail forex customers at qualifying institutions set forth in the Regulation. The requirement of Regulation 5.8 is to ensure the RFED or FCM holds liquid assets in relation to the amount of liability to retail forex customers.[44] However, such retail forex customer funds are not held in ''segregated accounts'' in manner comparable to section 4d of the Act, which are provided with explicit protections in the event of the bankruptcy of the FCM. The Commission is revising the Statement of Financial Condition of the Form 1–FR–FCM to require each FCM or RFED to report on line 19.B. the aggregate amount of funds held in qualifying accounts to meet its total obligation to retail forex customers as required by § 5.8. Such disclosure will provide greater transparency as to the firm's compliance with Commission regulations.

4. FCM Certified Annual Report Deadline

The Commission proposed to amend § 1.10(b)(1)(ii) to require an FCM to submit its certified annual report to the Commission and to the firm's DSRO within 60 days of its year-end date. Currently, an FCM is required to submit the annual certified financial statements within 90 days of its year-end date, except for FCMs that also are registered with the SEC as BDs, which are require to submit the certified annual report within 60 days of the year-end date under both Commission and SEC regulations. Therefore, the proposal would impact only FCMs that are not

[38] *Id.* at 8–9.

[39] *Id.*

[40] *See* 77 FR 6336 (Feb. 7, 2012).

[41] 7 U.S.C. 2(c).

[42] NFA Comment Letter at 9 (Feb. 15, 2013).

[43] *Id.*

[44] *See* 75 FR 3282, 3290 (Jan. 20, 2010).

dually-registered as BDs and would align the filing deadlines for both FCMs and dual registrant FCMs/BDs.

The Commission received one comment on the proposal. NFA supported the proposal noting that the amendment will provide both the Commission and DSROs with more timely information for monitoring the financial condition of an FCM.[45] The Commission considered the comment received and is adopting the amendments to § 1.10(b)(1)(ii) as proposed. The Commission also is cognizant of the fact that public accountants are currently engaged in the audit of FCMs for the year ending December 31, 2013 and possible for other year-end dates in 2014. Accordingly, in order to ensure that the amendments do not impede examinations that are currently in process, the Commission is establishing a compliance date for FCM annual audits for years ending June 1, 2014 or later. This compliance date also will align the revised reporting deadline with the auditing amendments to the auditing standards that public accountants use in the audit of FCMs and discussed in section II.E. below. Compliance dates are discussed further in section III below.

5. Leverage Ratio Calculation

The Commission proposed to add a new requirement in § 1.10(b)(5) to require each FCM to file with the Commission on a monthly basis its balance sheet leverage ratio. Proposed § 1.10(b)(5) defined the term ''leverage'' as an FCM's total balance sheet assets, less any instruments guaranteed by the U.S. Government and held as an asset or to collateralize an asset *(e.g.,* a reverse repurchase agreement) divided by the FCM's total capital (*i.e.,* the sum of the FCM's stockholders' equity and subordinated debt). FCMs currently file the same leverage information with NFA on a monthly basis using the same definition of the term ''leverage.'' The leverage ratio would provide information regarding the amount of assets supported by the FCM's capital base, and would allow the Commission to enhance its oversight of FCMs that are highly leveraged relative to their peers or based upon the Commission's understanding of the firm's business model.

The Commission received three comments with respect to this proposal. Commenters were concerned that the leverage metrics proposed might not provide meaningful information and/or that the Commission's leverage definition was not consistent with those of other regulatory authorities. NFA noted that while the leverage definition proposed by the Commission is the same definition as that set forth in NFA Financial Requirement Section 16, it may not be the most appropriate measure.[46] NFA noted that it has been studying an alternative calculation method and encouraged the Commission to defer codifying a single definition until it has the opportunity to examine NFA's calculation results.[47] NFA also suggested the Commission consider adopting a requirement that FCMs report a leverage ratio as defined by a registered futures association rather than including a specific definition in the Commission's regulations.[48]

FIA indicated that it supported the proposed amendment, but stated that it is essential that the definition of the term ''leverage'' be consistent among regulatory authorities with supervision over FCMs and encouraged the Commission to coordinate with the SEC and the relevant SROs to ensure consistent treatment across the industry.[49]

RJ O'Brien objected to the proposal on the grounds that the definition of ''leverage'' in the proposal ''penalizes'' FCMs that are not dually-registered as BDs.[50] RJ O'Brien stated that an FCM-only entity's balance sheet is primarily composed of funds deposited by customers for trading commodity interests, and that the leverage ratio computed under the proposed regulation does not properly reflect the risk of the firm's business.[51] RJ O'Brien recommended that the Commission work with NFA to develop a more meaningful metric and further recommended that the Commission not permit or require public disclosure of FCM leverage ratios under the current methodology because RJ O'Brien believes it could provide the public with misleading information.[52]

The Commission has considered the comments and has determined to adopt a final regulation requiring FCMs to submit to the Commission monthly balance sheet leverage information. As noted above, such information will enhance the Commission's ability to conduct financial surveillance of FCMs. The final regulation, however, will define the term ''leverage'' by referencing to the rules of a registered futures association as suggested by NFA. This revision to the final regulation will align the Commission's definition of leverage with the current NFA definition of leverage.[53]

As stated above, in proposing the requirement for FCMs to report their monthly leverage ratios, the Commission intended for FCMs to file the same leverage information that they currently file with the NFA. In this regard, the Commission proposed a definition of leverage that is identical to the current NFA definition contained in its Financial Requirement Section 16. Such an approach will enhance the consistency in how the Commission and the SROs impose leverage reporting requirements on FCMs and in how leverage is monitored by the regulators. Furthermore, in response to RJ O'Brien's comment, the Commission intends to work with NFA and other regulators going forward on any revisions to the definition of ''leverage'' to maintain as consistent a definition as practicable.

6. Procedural Filing Requirements

The Commission proposed to amend § 1.10(c)(2)(i) to require FCMs to electronically file with the Commission their monthly unaudited Forms 1–FR–FCM or FOCUS Reports and their certified annual financial reports. FCMs currently file their monthly unaudited financial statements with the Commission electronically using the WinJammer Online Filing System (''WinJammer'') and the proposed amendments merely codify current practices.[54]

FCM annual financial reports are filed in paper form with the Commission. Under the Commission's proposal, an FCM would use the WinJammer system to electronically file its certified financial report as a ''PDF'' document.

No comments were received on the proposed amendments to § 1.10(c)(2)(i). The Commission is adopting the amendments as proposed.

The Commission also is adopting a proposed technical amendment to § 1.10(c)(1) on which no comments were received. Regulation 1.10(c)(1) provides that any report or information required to be provided to the Commission by an IB or FCM will be considered filed

[45] NFA Comment Letter at 9 (Feb. 15, 2013).

[46] NFA Comment Letter at 7–8 (Feb. 15, 2013).

[47] *Id.* at 7.

[48] *Id.* at 8.

[49] FIA Comment Letter at 12 (Feb. 15, 2013).

[50] RJ O'Brien Comment Letter at 8–9 (Feb. 15, 2013)

[51] *Id.*

[52] *Id.*

[53] NFA is currently the only registered futures association.

[54] WinJammer is a web-based application developed and maintained jointly by the Chicago Mercantile Exchange and the NFA. The WinJammer system is provided at no cost to FCMs. FCMs currently use WinJammer to transmit Forms 1–FR–FCM, FOCUS Reports, and other financial information and regulatory notices to the Commission and to the SROs.

when received by the Commission Regional office with jurisdiction over the state in which the FCM has its principal place of business. The amendments to § 1.10(c)(1) sets forth the jurisdiction of each of the Commission's three Regional offices under § 140.02, and is intended to ensure that FCM's financial reports are filed expeditiously with the correct Commission Regional office.

B. § 1.11: Risk Management Program for Futures Commission Merchants

The Commission proposed new § 1.11 to require each FCM that carries customer accounts to establish a ''Risk Management Program,'' as defined in § 1.11(c), designed to monitor and manage the risks associated with the FCM's activities as an FCM. Under the Commission's proposal, the Risk Management Program must: (1) consist of written policies and procedures that have been approved by the ''governing body'' (defined below) of the FCM and furnished to the Commission; and (2) establish a risk management unit that is independent from an FCM's ''business unit'' (defined below) to administer the Risk Management Program.

NFA, FIA, ICI, CFA, Chris Barnard, and Paul/Weiss generally supported proposed § 1.11.[55] Advantage stated ''that most aspects of proposed § 1.11 are appropriate and unlikely to be burdensome as FCMs typically have most (if not all) of these requirements in place.'' [56] Several other commenters raised issues with specific components of the proposed regulation, which are discussed in the sections below. The Commission has considered the comments received and is adopting § 1.11 as proposed, with the following observations and clarifications.

1. Applicability

Proposed paragraph (a) of § 1.11 provides that the regulation would only apply to FCMs that accept money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result from soliciting or accepting orders for the purchase or sale of any commodity interest. FCMs that do not accept or hold customer funds to margin, guarantee or secure commodity interests are generally not operating as FCMs, and are not subject to § 1.11. To clarify, the Commission notes that it would expect registered FCMs that do not accept customer funds to establish a Risk Management Program that complies with § 1.11 and file such program with the Commission and with the FCMs' DSROs prior to changing their business model to begin accepting customer funds.

The Commission also requested comment on whether different risk management requirements for FCMs should be based upon some measurable criteria, such as size of the firm, and whether different elements of § 1.11 should apply to smaller FCMs versus larger FCMs. Advantage stated that a one-size fits all approach is less than optimal, and that the Commission could establish minimum risk management standards for specific business lines/customer type, and then require that FCMs engaging in those lines of business/clearing that type of customer have those programs in place.[57]

The Commission has considered the comment and has determined that § 1.11 provides sufficient flexibility for FCMs to establish a risk management program that is appropriate to its business operations. To develop specific requirements for different business activities would not be appropriate in that each FCM may operate in a different manner. The Commission believes that each FCM can develop its own program to meet its business activities using the general framework established by § 1.11.

The Commission received no additional comments on proposed § 1.11(a) and is adopting the provision as proposed.

2. Definitions

The Commission proposed definitions of the terms ''customer,'' ''business unit,'' ''governing body,'' ''segregated funds,'' and ''senior management'' in paragraph (b) of § 1.11. These definitions are designed to ensure that there is accountability at the highest levels for the FCM's key internal controls and processes regarding the FCM's responsibility to meet its obligations as a futures market participant, including acting as an intermediary for customer transactions, and its obligation to safeguard customer funds.

The term ''business unit'' was proposed to include generally any department, division, group or personnel of an FCM or any affiliate involved in soliciting orders and handling customer money, including segregation functions, and personnel exercising direct supervisory authority over the performance of such activities. The definition was intended to delineate clearly the separation of the risk management unit required by the regulation from the other personnel of an FCM from whom the risk management must be independent.

The term ''customer'' was proposed broadly to include futures customers (as defined in § 1.3) trading futures contracts, or options on futures contracts listed on designated contract markets, 30.7 customers (as proposed to be defined in § 30.1) trading futures contracts or options on futures contracts listed on foreign contract markets, and Cleared Swaps Customers (as defined in § 22.1) engaging in Cleared Swaps.

The term ''governing body'' was proposed to be defined as the sole proprietor, if the FCM is a sole proprietorship; a general partner, if the FCM is a partnership; the board of directors, if the FCM is a corporation; and the chief executive officer, chief financial officer, the manager, the managing member, or those members vested with the management authority if the FCM is a limited liability company or limited liability partnership. The term ''senior management'' was proposed to mean any officer or officers specifically granted the authority and responsibility to fulfill the requirements of senior management under proposed § 1.11 by the governing body.

The term ''segregated funds'' was proposed to mean money, securities, or other property held by an FCM in separate accounts pursuant to § 1.20 for futures customers, pursuant to § 22.2 for Cleared Swaps Customers, and pursuant to § 30.7 for 30.7 customers. The proposed definition of ''segregated funds'' makes clear that the requirements of § 1.11 apply to all customer funds that may be held by an FCM. The Act and Commission regulations currently require FCMs to hold each type of segregated funds in separate accounts and to segregate such segregated funds from the FCM's own funds and to segregate each class of segregated funds from each other type, except if otherwise permitted by Commission rule, regulation or order.[58]

The Commission did not receive any comments regarding the proposed definitions in § 1.11(b) and is adopting the amendments as proposed.

3. Approval of Policies and Procedures and Submission to the Commission

The Commission proposed § 1.11(c) to require each FCM to establish, maintain, and enforce a system of risk management policies and procedures

[55] NFA Comment Letter at 10 (Feb. 15, 2013); FIA Comment Letter at 52 (Feb. 15, 2013); ICI Comment Letter at 7 (Jan. 14, 2013); CFA Comment Letter at 4 (Feb. 13, 2013); Chris Barnard Comment Letter at 2 (Dec. 18, 2012); Paul/Weiss Comment Letter at 2 (Feb. 15, 2013).

[56] Advantage Comment Letter at 2 (Feb. 15, 2013).

[57] Advantage Comment Letter at 2 (Feb. 15, 2013).

[58] *See* 7 U.S.C. 6d(a)(2) and 7 U.S.C. 6d(f).

designed to monitor and manage the risks associated with the activities of the FCM as an FCM.[59] The policies and procedures are collectively referred to as the FCM's Risk Management Program.

Under proposed § 1.11, the FCM's governing body is required to approve in writing the FCM's Risk Management Program and any material changes to the Risk Management Program. The FCM also is required to provide a copy of the Risk Management Program to the Commission and to the FCM's DSRO upon application for registration or upon request by the Commission or by the FCM's DSRO. The filing of the Risk Management Program is intended to allow the Commission and the FCM's DSRO to monitor the status of risk management practices among FCMs.

Several commenters expressed general support for the requirement that an FCM implement a risk management program.[60] The Commission received no other comments on proposed § 1.11(c) and is adopting the amendments as proposed.

4. Organizational Requirements of the Risk Management Program

a. Separation of Risk Management Unit from Business Unit

The Commission proposed § 1.11(d), requiring an FCM to establish a risk management unit that is independent from the FCM's business unit to administer the Risk Management Program. As part of the Risk Management Program, each FCM must establish and maintain a risk management unit with sufficient authority, qualified personnel, and financial, operational, and other resources to carry out the Risk Management Program. The risk management unit is required to report directly to senior management.

Several commenters opposed the separation of the risk management unit from the business unit. RCG stated that requiring FCMs to separate the risk management function from the ''business unit'' is unnecessary, counterproductive, and will likely result in increased risk to the FCM and its customers.[61] RCG argued that the proposed requirement removes a valuable, mature talent pool from participating in risk management, and the proposal is counterproductive in that it has the potential of blocking the flow of historical and financial information about a customer from the business side of the FCM to the risk management side of the FCM, information that is crucial to evaluating risk.[62]

Phillip Futures Inc. stated that the proposed separation of the business unit from the risk management unit will lead to a decrease in the timeliness of decision making as decisions will have to be filtered through new supervisory employees that the proposal will ultimately create, which will hinder each FCM's ability to assess risk.[63] Phillip Futures Inc. stated that so long as internal controls, senior leadership, and training programs of a firm are created with the proper checks and balances which ensure proper supervision of activities conducted by the business unit and the risk management unit, the respective units need not be independent from each other.[64] Phillip Futures Inc. also asserted that the separation of duties required by the regulation would require it to hire multiple employees who would have limited job responsibilities.[65]

CHS Hedging stated that it would not be realistic or cost effective for smaller FCMs to establish an entirely separate risk management unit, and argued that if supervisory risk management personnel report to senior management separately from the business side to avoid a conflict of interest, a standalone unit should not be required.[66]

RJ O'Brien also argued that requiring FCMs to create a separate risk management unit is not operationally or financially practical for all FCMs, particularly small to midsized FCMs, and needlessly increases the costs of compliance for most firms without producing significant benefits.[67] RJ O'Brien stated that supervisors at many small to mid-sized FCMs have the knowledge and expertise that can be essential to maintaining a strong risk management program at their firm, however, such supervisors also may have a role in the business unit activities.[68] They proposed that the Commission revise the proposed regulation such that supervisors of business unit personnel are permitted to be part of the risk management unit provided that such supervisors are not compensated in connection with soliciting or accepting orders for the purchase or sale of any commodity interest.[69]

The Commission notes that, as stated above, only employees involved in soliciting orders and handling customer money (including the segregation functions), and employees directly supervising such activities would fall within the definition of ''business unit'' under § 1.11(b)(1). Therefore, the Commission does not agree with the assertion that a large pool of employees will be barred from participating in the risk management unit. Further, the Commission observes that the independence of the risk management unit required by proposed § 1.11 does not require FCMs to establish information partitions between the risk management unit and members of the business unit, and disagrees with commenters that such independence requirement would block the flow of historical and financial information about a customer from the business side of the FCM to the risk management side of the FCM. In any event, the Commission believes that the freedom from conflicts of interests that the independence of the risk management unit provides is critically important to the protection of customer funds in the custody of the FCM.

The FIA commented that in adopting the rules governing risk management programs for SDs and MSPs, the Commission clarified the interpretation of certain provisions, and asked that the Commission confirm that such clarifications apply equally to the provisions of § 1.11.[70] In general, the FIA requested the Commission to confirm, subject to certain exceptions or requirements, that the requirements of § 1.11:

(1) Do not prescribe rigid organization structures;

(2) do not require an FCM's risk management unit to be a formal division in the FCM's organizational structure, provided that the FCM will be able to identify all personnel responsible for required risk management activities

[59] Because § 1.11 applies to all FCMs that accept money, securities, or property (or extend credit in lieu thereof) from customers, it necessarily applies to any risks generated by the FCMs customers' trading activities. *See, e.g., In re FCStone LLC,* CFTC Docket 13–24, (May 29, 2013), where a customer's trading activities and the FCM's inadequate risk management practices caused the firm to lose over $127,000,000.

[60] *See* Franklin Comment Letter at 2 (Feb. 15, 2013); AIMA Comment Letter at 1 and 4 (Feb. 15, 2013); TIAA–CREF Comment Letter at 3 (Feb. 15, 2013).

[61] RCG Comment Letter at 5 (Feb. 12, 2013). *See also* Phillip Futures Inc. Comment Letter at 2 (Feb. 14, 2013).

[62] RCG Comment Letter at 5 (Feb. 12, 2013). *See also* Phillip Futures Inc. Comment Letter at 2 (Feb. 14, 2013).

[63] Phillip Futures Inc. Comment Letter at 2 (Feb. 14, 2013).

[64] *Id.*

[65] *Id.*

[66] CHS Hedging Comment Letter at 3 (Feb. 15, 2013).

[67] RJ O'Brien Comment Letter at 9 (Feb. 15, 2013).

[68] *Id.*

[69] *Id.*

[70] *See* 77 FR 20128 (April 3, 2012).

even if such personnel fulfill other functions; and

(3) Allow FCMs to establish dual reporting lines for risk management personnel performing functions in addition to their risk management duties, provided that § 1.11 would not permit a member of the risk management unit to report to any officer in the business unit for any non-risk management activity.[71]

The FIA further commented that the ''policies and procedures'' approach provides an adequate amount of flexibility that will allow the FCMs to rely upon any existing compliance or risk management capabilities to meet the requirements of the rule.[72]

The Commission generally agrees with the FIA in that, while the requirements of § 1.11 represent prudent risk management practices, they do not prescribe rigid organizational structures. The Commission also believes that the ''policies and procedures'' approach provides an adequate amount of flexibility that will allow FCMs to rely upon any existing compliance or risk management capabilities to meet the requirements of the final rule. The Commission further believes that nothing in § 1.11 would prevent FCMs from relying upon existing compliance and risk management programs to a significant degree.

As the Commission confirmed in its final rulemaking discussing § 23.600(b) regarding the risk management program for SDs and MSPs, the Commission also confirms that § 1.11(d) does not require a registrant's risk management unit to be a formal division in the registrant's organizational structure, provided that the FCM will be able to identify all personnel responsible for required risk management activities as its ''risk management unit'' even if such personnel fulfill other functions in addition to their risk management activities; and permits FCMs to establish dual reporting lines for risk management personnel performing functions in addition to their risk management duties, but this rule would not permit a member of the risk management unit to report to any officer in the business unit for any non-risk management activity.[73] Such dual reporting invites conflicts of interest and would violate § 1.11's risk management unit independence requirement.

The Commission notes that the formal independence of the risk management unit from the business unit does not relieve an FCM from the duty to resolve other conflicts of interest that may have an adverse effect on the effectiveness of the FCM's risk management program. An FCM's CCO is required under § 3.3(d)(2) to resolve any conflicts of interest that may arise, in consultation with the FCM's board of directors or its senior officer. Thus, the Commission would expect an FCM to recognize and eliminate or appropriately mitigate any conflict of interest between the FCM's business interests and its duty to establish and maintain an effective risk management program.

Having considered the comments regarding § 1.11(d), the Commission is adopting the provision as proposed.

5. Components of the Risk Management Program

The Commission's proposed § 1.11(e) provides for a non-exclusive list of the elements that must be a part of the Risk Management Program of an FCM. Those elements include: (1) Identifying risks (including risks posed by affiliates, all lines of business of the FCM, and all other trading activity of the FCM) and setting of risk tolerance limits; (2) providing periodic risk exposure reports to senior management and the governing body; (3) operational risk controls; (4) capital controls; and (5) establishing a risk management program that takes into account risks associated with the safekeeping and segregation of customer funds.

Proposed § 1.11(e)(1)(ii) requires the Risk Management Program to take into account risks posed by affiliates, all lines of business of the FCM, and all other trading activity engaged in by the FCM. The FIA asked the Commission to confirm its position that, to the extent that many FCMs are part of a larger holding company structure that may include affiliates that are engaged in a wide array of business activities, the Commission understands that, in some instances, the top level company in the holding company structure, which has the benefit of an organization-wide view, is in the best position to evaluate the risks that an affiliate of an FCM may pose to the FCM.[74] Therefore, to the extent an FCM is part of a holding company within an integrated risk management program, the FCM may address affiliate risks and comply with § 1.11 through its participation in a consolidated entity risk management program provided that such program does in fact assess the risks posed to the FCM by its affiliated entities.[75]

The Commission recognizes that some FCMs will be part of a larger holding company structure that may include affiliates that are engaged in a wide array of business activities. The Commission understands with respect to these entities, that in some instances, the top level company in the holding company structure is in the best position to evaluate the risks that an affiliate of an FCM may pose to the enterprise, as it has the benefit of an organization-wide view and because an affiliate's business may be wholly unrelated to an FCM's activities. Therefore, to the extent an FCM is part of a holding company with an integrated risk management program, the Commission would allow an FCM to address affiliate risks and comply with § 1.11(e)(1)(ii) through its participation in a consolidated entity risk management program.

In regard to customer funds, the Commission notes that FCMs are required by the Act and Commission regulations to segregate and safeguard funds deposited by customers for trading commodity interests. Recent events have emphasized that it is essential that FCMs maintain adequate systems of internal controls, involving the participation and review of the firm's senior management, in order to properly safeguard customer funds. Accordingly, § 1.11(e)(3)(i) requires that the risk management policies and procedures of an FCM related to the risks associated with safekeeping and segregation of customer funds must include: (1) The evaluation and monitoring of depositories;[76] (2) account opening procedures that ensure the FCM obtains the acknowledgment required under § 1.20 from the depository and that the account is properly titled as belonging to the customers of the FCM;[77] (3) establishing

[71] FIA Comment Letter at 54–55 (Feb. 15, 2013).

[72] *Id.* at 52.

[73] 77 FR 20128 (April 3, 2012).

[74] FIA Comment Letter at 55 (Feb. 15, 2013).

[75] *Id.*

[76] The evaluation process must include documented criteria that any depository will be assessed against in order to qualify to hold funds belonging to customers. The criteria must address a depository's capitalization, creditworthiness, operational reliability, and access to liquidity. The criteria must also address risks associated with concentration of customer funds in any depository or group of depositories, the availability of deposit insurance, and the regulation and supervision of depositories. The evaluation criteria is intended to ensure that the FCM adopts an evaluation process which reviews potential depositories against substantive criteria relevant to the safe custody of customer funds and that the FCM's process for evaluating and selecting depositories can be reviewed by regulators and auditors. The FCM also must maintain a documented process addressing the ongoing monitoring of selected depositories, including a thorough due diligence review of each depository at least annually.

[77] As required by § 1.20, such account opening documentation is necessary to ensure that the

Continued

and maintaining an adequate targeted amount of excess funds in customer accounts reasonably designed to ensure the FCM is at all times in compliance with the segregation requirements for customer funds under the Act and Commission regulations, as discussed further below; (4) controls ensuring that the withdrawal of cash, securities, or other property from accounts holding customer funds not for the benefit of customers are in compliance with the Act and Commission regulations;[78] (5) procedures for assessing the appropriateness of investing customer funds in accordance with § 1.25;[79] (6) the valuation, marketability, and liquidity of customer funds and permitted investments made with customer funds; (7) the appropriate separation of duties of personnel responsible for compliance with the Act and Commission regulations relating to the protection and financial reporting of customer funds;[80] (8) procedures for the timely recording of transactions in the firm's books and records; and (9) annual training of personnel responsible for compliance with the Act and Commission regulations relating to the protection and financial reporting of customer funds.

Regarding the requirement that FCMs establish and maintain an adequate targeted amount of excess funds in customer accounts, the Commission notes that FCMs currently deposit proprietary funds into both customer segregated accounts and part 30 secured accounts as a buffer to minimize the possibility of the firm being in violation of its segregated and secured fund obligations at any time. Under the final rule, the senior management of the FCM must perform appropriate due diligence in setting the amount of this buffer and must consider the nature of the FCM's business including the type and general creditworthiness of its customer base, the types of markets and products traded by the firm's customers, the proprietary trading activities of the FCM, the volatility and liquidity of the markets and products traded by the customers and the FCM, the FCM's own liquidity and capital needs, and historical trends in customer segregation and secured account funds balances, customer debits, and margin deficits (*i.e.,* undermargined amounts). The FCM also must reassess the adequacy of the targeted residual interest quarterly.

The Commission believes that each FCM must set the amount of excess segregated and secured funds required utilizing a quantitative and qualitative analysis that reasonably ensures compliance at all times with segregated and secured fund obligations. Such analysis must take into account the various factors that could affect segregated and secured balances, and must be sufficiently described in writing to allow the DSRO of the FCM and the Commission to duplicate the calculations and test the assumptions. The analysis must provide a reasonable level of assurance that the excess is at an appropriate level for the FCM.[81] A failure to adopt or maintain appropriate risk management policies and procedures or to implement, monitor and enforce controls required by § 1.11 may result in a referral to the Commission's Division of Enforcement for appropriate action.

Proposed § 1.11(e)(3)(i)(G) requires the appropriate separation of duties among individuals responsible for compliance with the Act and Commission regulations relating to the protection and financial reporting of segregated funds, including the separation of duties among personnel that are responsible for advising customers on trading activities, approving or overseeing cash receipts and disbursements (including investment operations), and recording and reporting financial transactions. Phillip Futures Inc. stated that such a separation of duties would require it to hire multiple employees that would have limited job responsibilities, and suggested that as long as internal controls are adequate and supervisory personnel are properly registered with the Commission and NFA, the separation of duties is not necessary.[82]

Regulation 1.11(e)(3)(i)(I) requires that the written policies and procedures include procedures for the reporting of suspected breaches of the policies and procedures to the CCO, without fear of retaliation, and the consequences of failing to comply with the segregation requirements of the Act and regulations. Chris Barnard recommended that the procedures for reporting breaches should allow and stress the complete anonymity of the reporting party (whistleblower).[83] The Commission takes note of Mr. Barnard's comments related to whistleblowers as sound practices. The Commission notes, however, that such additional requirements were not proposed and, in any event, are outside the scope of this rulemaking.[84]

Also, to ensure the effectiveness of a Risk Management Program, § 1.11(e)(4) requires that the Risk Management Program include a supervisory system that is reasonably designed to ensure that the risk management policies and procedures are diligently followed.

The Commission has considered the comments received on the proposal and, for the reasons stated above, is adopting § 1.11(e) as proposed.

6. Annual Review, Distribution of Policies and Procedures and Recordkeeping

The Commission's proposal also includes: (1) § 1.11(f) which requires an annual review and testing of the adequacy of each FCM's Risk Management Program by internal audit staff or a qualified external, third party service; (2) § 1.11(g) which requires the timely distribution of written risk management policies and procedures to relevant supervisory personnel; and (3) § 1.11(h) which discusses recordkeeping and availability of records. The Commission received no comments on paragraphs (f), (g), and (h) of § 1.11 and is adopting the paragraphs as proposed.

7. CCO or CEO Certification

Regulation 3.3 requires the CCO or CEO of an FCM to provide an annual report to the Commission that must review each applicable requirement under the Act and Commission regulations, and with respect to each

depositories are aware of their obligations regarding the accounts and the statutory and regulatory protections afforded the funds held in the accounts due to their status as segregated funds.

[78] The controls must include the conditions for pre-approval and the notice to the Commission for such withdrawals required by § 1.23, § 22.17, or § 30.7, discussed below.

[79] The FCM's assessment must take into consideration the market, credit, counterparty, operational, and liquidity risks associated with the investments.

[80] The policies and procedures must provide for the separation of duties among personnel that are responsible for customer trading activities, and approving and overseeing cash receipts and disbursements (including investment and treasury operations). The policies and procedures must further require that any movement of funds to affiliated companies or parties be approved and documented.

[81] Separate from requiring the establishment of a target for residual interest, the Commission is further requiring, as discussed in more detail under sections II.G.9., II.H., and II.I. for §§ 1.20, 1.22, and 1.23, respectively, that residual interest exceed the sum of outstanding undermargined amounts to provide a mechanism for ensuring compliance with the prohibition of the funds of one customer being used to margin or guarantee the positions of another customer under the Act and existing regulations.

[82] Phillip Futures Inc. Comment Letter at 2 (Feb. 14, 2013).

[83] Chris Barnard Comment Letter at 2 (Dec. 18, 2012).

[84] The Commission further notes that it maintains a whistleblower program that provides for the anonymous reporting of violations of the Act and Commission regulations. *See* part 165 of the Commission's regulations.

applicable requirement, identify the policies and procedures that are reasonably designed to ensure compliance with the requirement, and provide an assessment of the effectiveness of the policies and procedures.[85] The annual report also must include a certification by the CCO or CEO that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the information contained in the annual report is accurate and complete.

The Commission requested comment on whether the standard for the CCO's or CEO's certification in the annual report (*i.e.,* based on the CCO's or CEO's knowledge and reasonable belief) required under § 3.3 is adequate for a certification of the FCM's compliance with policies and procedures for the safeguarding of customer funds. Specifically, the Commission requested comment on whether § 1.11 should contain a separate CCO or CEO certification requirement that would impose a higher duty of strict liability or some other higher obligation on a CCO or CEO.

The Commission received three comments in this regard. NFA and FIA believed that the ''knowledge and reasonable belief'' standard in § 3.3 remains appropriate for a CCO's/CEO's certification regarding an FCM's customer funds safeguards.[86] That is, the CCO or CEO should not be liable for matters that are beyond the CCO's/CEO's knowledge and reasonable belief. Further, NFA stated that the Commission should reconsider whether the CCO's/CEO's annual report should contain a separate certification (with the ''knowledge and reasonable belief language'') executed by the FCM's CEO or CFO regarding the adequacy of the FCM's customer funds safeguards.[87] Newedge opposed the imposition of a strict liability standard on a CCO/CEO for the annual certifications because the CCO/CEO is relying on internal representations from other FCM employees that are far more expert regarding these matters.[88] Newedge stated that such a standard would make it difficult to recruit qualified persons to serve as a CCO/CEO.[89]

In response to these comments, the Commission is not requiring a separate CCO/CEO certification requirement imposing a higher duty of strict liability or other standard for the segregation of customer funds. The Commission also is not imposing a separate certification by the FCM's CEO or CFO at this time. Commission staff will monitor the role of the CCO/CEO as the regulation is implemented and propose to the Commission any amendments to the CCO's/CEO's standard for certifying compliance as deemed appropriate based upon staff's experiences.

C. § 1.12: Maintenance of Minimum Financial Requirements by Futures Commission Merchants and Introducing Brokers

The regulatory notices required under § 1.12 are intended to provide the Commission and SROs with prompt notice of potential adverse conditions at FCMs that may indicate a possible threat to the financial condition of the firm or to the safety of customer funds held by the FCM. Regulation 1.12 currently obligates FCMs to provide notice to the Commission and to the respective DSROs if certain specified reportable events occur. Reportable events include: Failing to maintain the minimum level of required regulatory capital (§ 1.12 (a)); failing to maintain current books and records (§ 1.12(c)); and failing to comply with the requirements to properly segregate customer funds (§ 1.12(h)). As discussed further below, the Commission proposed to amend § 1.12 to include several additional reportable events and to revise the process for submitting reportable events to the Commission and DSROs.

1. Timing of Notices

The proposed new reportable events, discussed individually below, will require immediate notice to the Commission and the firm's DSRO upon the occurrence of the relevant event. FIA commented that while it is not opposed to a requirement for FCMs to provide prompt notice of a reportable event, it questioned the need for ''immediate'' notice as proposed by the Commission.[90] FIA recommended that if the Commission determined to adopt the proposed early warning notices that it allow 24 hours if the event is financial in nature and 48 hours for business-related events in order to afford FCMs time to determine the cause of the event and take an appropriate corrective action.[91]

The purpose of the ''early warning'' notice system established under § 1.12 is to provide the Commission and an FCM's DSRO with adequate and prompt notice of a reportable event in order to allow Commission staff to assess the situation and to consult with the registrant and the SROs to determine if further action is necessary in order to protect customer funds or to determine if the FCM can continue to meet its obligations to the marketplace and clearing process. The filing of a notice is often the first step where the Commission staff is alerted to a potential issue at a firm. The Commission also initiates a dialogue with the firm and the firm's DSRO, as necessary, upon receipt of a § 1.12 notice.

Given the critical role that notices play in the Commission's and DSRO's surveillance of FCMs, the Commission believes that immediate notice is necessary when a reportable event is financial in nature (*e.g.,* the FCM is not in compliance with the Commission's capital or segregation requirements). In such situations, the firm should file immediate notice with the Commission. If a firm needs additional time to assess the cause of the reportable event, or if additional time is needed to document what steps the FCM will take to remedy the situation causing the reportable event, it may file an amendment to its initial notice with the Commission. In addition, in a situation where the registrant is reporting that it is undercapitalized or undersegregated, the Commission and DSRO will have initiated an ongoing dialogue whereby the Commission and the DSRO will be in frequent communication with the registrant and will receive updated information as the registrant becomes aware of the facts.

Reportable events that are not related to an FCM's ability to meet its financial obligations or not directly related to the protection of customer funds may not be subject to the same sense of immediacy and the Commission is revising its proposed regulations accordingly. The revisions to the proposed amendments are discussed in the appropriate sections below with the comments received on the proposed new notice provisions.

2. Undercapitalized FCMs and IBs

Regulation 1.12(a) requires an FCM or IB that fails to maintain the minimum level of adjusted net capital required by § 1.17 to provide immediate notice to

[85] Such report is mandated by § 3.3 of the Commission's regulations; *See* Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 FR 20128, Apr. 3, 2012 (promulgating final rules concerning the CCOs of FCMs, swap dealers, and major swap participants); *see also* § 4d(d) of the Act, 7 U.S.C. 6d(d).

[86] FIA Comment Letter at 11 (Feb. 15, 2013); NFA Comment Letter at 10 (Feb. 15, 2013).

[87] NFA Comment Letter at 10 (Feb. 15, 2013).

[88] Newedge Comment Letter at 3 (Feb. 15, 2013).

[89] *Id.*

[90] FIA Comment Letter at 37–38 (Feb. 15, 2013).

[91] *Id.*

the Commission and to the entity's DSRO. The notice must include additional information to adequately reflect the FCM's or IB's current capital condition as of any date that the entity is undercapitalized.

The Commission proposed to amend § 1.12(a) to clarify that if the FCM or IB cannot compute or document its actual capital at the time it knows that it is undercapitalized, it must still provide the written notice required by § 1.12(a) immediately and may not delay filing the notice until it has adequate information to compute its actual level of adjusted net capital.

NFA commented in support of the Commission's proposal noting that in situations where an FCM is in potential distress, it may be even more important for the Commission and the firm's DSRO to become immediately aware of the situation so that the Commission and DSRO staff can assist in determining the firm's current, accurate financial condition.[92] The Commission agrees that it is imperative that an FCM or IB provide immediate notice if the firm is undercapitalized and, accordingly is adopting the amendment as proposed.

3. Insufficient Segregation of Funds of Cleared Swaps Customers

Regulation 1.12(h) currently requires an FCM that fails to hold sufficient funds in segregated accounts to meet its obligations to futures customers, or that fails to hold sufficient funds in separate accounts for foreign futures or foreign options customers, to provide immediate notice to the Commission and to the FCM's DSRO. The Commission proposed to amend paragraph (h) to include an explicit requirement that an FCM provide immediate notice to the Commission and to its DSRO if the FCM fails to hold sufficient funds in segregated accounts for Cleared Swaps Customers to meet its obligation to such customers.[93] The amendment will ensure immediate notification of a failure to hold sufficient funds in segregation for Cleared Swaps Customers so that the Commission and the firm's DSRO can promptly assess the financial condition of an FCM and determine if there are threats to the safety of the Cleared Swaps Customers Collateral held by the FCM. The amendment also harmonizes the notice requirements whenever an FCM fails to hold in proper segregated or secured accounts sufficient funds to meet its total obligations to futures customers, 30.7 customers, and Cleared Swaps Customers.

The Commission did not receive any comments on proposed § 1.12(h). The Commission is adopting the amendments to paragraph (h) as proposed.

4. Investment of Customer Funds in Contravention of Regulation 1.25

The Commission also proposed to amend § 1.12 by adding new paragraph (i) to require an FCM to provide immediate notice whenever it discovers or is informed that it has invested funds held for customers in investments that are not permitted investments under § 1.25, or if the FCM holds permitted investments in a manner that is not in compliance with the provisions of § 1.25, such as the investment concentration limitations contained in § 1.25(b)(3). The proposal applies to funds held for futures customers, 30.7 customers, and Cleared Swaps Customers.

The Commission received no comments on the proposed amendments to § 1.12(i). The Commission is adopting paragraph (i) as proposed.

5. Notice of Residual Interest Falling Below Targeted Level or Undermargined Amounts

The Commission proposed to amend § 1.12 to provide a new paragraph (j) to require an FCM to provide immediate notice to the Commission and to the firm's DSRO if the FCM does not hold an amount of funds in segregated accounts for futures customers or for Cleared Swaps Customers, or if the FCM does not hold sufficient funds in secured accounts for 30.7 customers, sufficient to meet the firm's targeted residual interest in one or more of these accounts as computed under proposed § 1.11, which is being adopted herein, or if its residual interest in one or more of these accounts is less than the sum of outstanding margin deficits (*i.e.,* undermargined amounts) for such accounts. Regulation 1.11, as adopted herein, also requires each FCM that carries customer funds to calculate an appropriate amount of excess funds (*i.e.,* proprietary funds) to hold in segregated or secured accounts to mitigate the possibility of the FCM being undersegregated or undersecured due to a withdrawal of proprietary funds from a segregated or secured account.

FIA questioned the necessity of the proposed provision noting that under the proposed amendments to § 1.32 each FCM holding customer funds is required to file a report with the Commission on a daily basis that will disclose if the FCM's residual interest has fallen below the FCM's targeted amount or if the residual amount is less than the sum of the customers' margin deficits.[94] FIA also noted that under current regulations an FCM's residual interest will frequently fall below its targeted amount and that if the Commission adopts its proposed amendments to §§ 1.20, 22.2 and 30.7 to require an FCM to use proprietary funds to cover margin deficits, withdrawals in excess of 25 percent of the firm's residual interest will likely be a daily event requiring daily notices to be filed with the Commission and with the FCM's DSRO.[95]

One of the primary objectives of the proposed amendments to § 1.12 is to ensure that the Commission and DSROs receive notice of potential financial or operational issues at an FCM, or of rule violations by an FCM, in as timely a manner as possible such that the Commission and the FCM's DSRO will be in a position to assess the issues and the potential impact on the FCM's ability to meet its regulatory obligations and its ability to safeguard customer funds. While the proposed amendments to § 1.32 do require each FCM holding customer funds to file on a daily basis a Segregation Schedule, Secured Amount Schedule, and Cleared Swaps Segregation Schedule (as appropriate) that includes information concerning the amount of the firm's actual and targeted residual interests, the notice required by § 1.12(j) requires the firm to include a discussion of the cause of the event, and what steps the firm will take to increase the residual interest. The notice will assist the Commission and the DSROs in determining what, if any, additional steps may be necessary in order to mitigate potential market disruptions if the FCM cannot meet its regulatory obligations, and will enhance the overall safety of customer funds. In addition, the Commission believes that the filing of a notice by an FCM will focus greater attention by management at the firm on the fact that the firm's

[92] NFA Comment Letter at 10 (Feb. 15, 2013).

[93] Commencing November 13, 2012, the compliance date for certain Commission part 22 regulations, FCMs are required under § 22.2 to hold a sufficient amount of funds in Cleared Swaps Customer Accounts to meet the Net Liquidating Equity of each Cleared Swaps Customer. 77 FR 6336 (Feb. 7, 2012).

[94] FIA Comment Letter at 38 (Feb. 15, 2013). The Commission is proposing to require each FCM to file with the Commission and with the firm's DSRO a daily: (1) Segregation Schedule (§ 1.32); (2) Secured Amount Schedule (§ 30.7); and, (3) Cleared Swaps Segregation Schedule (§ 22.2)). The Commission proposed to include information disclosing the FCM's targeted residual interest and whether the amount of the actual residual interest exceeds the targeted residual interest and the total amount of the FCM's margin deficiencies in the Segregation Schedule, Secured Amount Schedule, and the Cleared Swaps Segregation Schedule.

[95] *Id.*

actual residual interest is below its targeted residual interest, which should result in further reflection by management on the adequacy of the target amount and/or any changes in operations that may be appropriate, including increasing the firm's residual interest or using other sources of liquidity.

The Commission also notes that an FCM's obligation under § 1.12(j) to file a notice when the firm's residual interest is less than the sum of the undermargined amounts in its customer accounts is determined at the point in time that the firm is required to maintain as residual interest the undermargined amounts under § 1.22, § 22.2, and § 30.7. In addition, the Commission further notes that the obligation to file a notice under § 1.12(j) when the firm's residual interest is less than the sum of the undermargined amounts in its customer accounts commences as of the respective compliance dates for § 1.22, § 22.2, and § 30.7 established by the Commission and discussed further in section III below.

The Commission has considered the comments and has determined to adopt new paragraph 1.12(j) as proposed and as clarified above.

6. Events Causing Material Adverse Financial Impact or Material Change in Operations

The Commission proposed new paragraphs (k) and (l) to § 1.12. Proposed paragraphs (k) and (l) will require an FCM to provide notice to the Commission and to the firm's DSRO in the event of a material adverse impact in the financial condition of the firm or a material change in the firm's operations. Proposed paragraph (k) will require an FCM to provide immediate notice if the FCM, its parent, or a material affiliate, experiences a material adverse impact to its creditworthiness or its ability to fund its obligations. Indications of a material adverse impact of an FCM's creditworthiness may include a bank or other financing entity withdrawing credit facilities, a credit rating downgrade, or the FCM being placed on ''credit watch'' by a credit rating agency.

Proposed paragraph (l) will require an FCM to provide immediate notice of material changes in the operations of the firm, including: A change in senior management; the establishment or termination of a material line of business; a material change in the FCM's clearing arrangements; or a material change in the FCM's credit arrangements. Paragraph (l) is intended to provide the Commission with notice of material events, such as the departure of the FCM's CCO, CFO, or CEO.

Two comments were received on the proposal. FIA stated that the proposed amendments do not provide an FCM sufficient guidance on the circumstances that would require notice and requested that the Commission define more precisely the events that would require notice.[96] RJ O'Brien similarly stated its concern that the term ''creditworthiness'' as used in proposed Regulation 1.12(k) is ambiguous and subjective and requires a clearer definition to afford FCMs the ability to reasonably ascertain their reporting duties and obligations.[97]

FIA also recommended that the Commission coordinate with the SEC and the banking regulators to establish a uniform standard identifying ''material adverse'' changes or impacts.[98] Finally, FIA noted that it does not believe that a change in senior management at an FCM should require an early warning notice of any kind because such notice is already provided to NFA in the ordinary course.[99]

The Commission has considered the comments and has determined to adopt the amendments to § 1.12(k) and (l) as proposed, with the revision that the notices required by § 1.12(l) must be filed promptly, but not later than 24 hours after the event, instead of immediately. By adopting this revision, the Commission acknowledges that immediate notice is not necessary in all situations.

An FCM should report § 1.12(l) notices in a punctual or prompt manner, but may do so without the expediency required by an immediate notice provision that is required, for example, when a firm is undercapitalized or undersegregated, which may indicate that immediate Commission or DSRO action is required to assess the financial condition of the FCM or the safety of customer funds. This revision provides the appropriate balance between the receipt of timely notices and the ability of the FCM to document an explanation of the events that trigger the notice.

As noted above, the Commission proposed additional notice provisions under § 1.12 in order to ensure that the Commission and DSROs receive timely information regarding certain events that should be assessed by the Commission and the DSROs as part of the overall oversight and risk assessment of FCMs. Regulation 1.12(k) will require an FCM to provide notice if the FCM or its parent or material affiliate experiences a material adverse impact to its creditworthiness or its ability to fund its obligations. Regulation 1.12(l) will require an FCM to provide notice if there is a material change in the firm's operations, senior management, clearing arrangements, or a material line of business.[100] The purpose of paragraphs (k) and (l) is to provide the Commission and the relevant DSRO with an opportunity to initiate a dialogue with the firm regarding any potential adverse impact that such a material change may have on the ability of the FCM to meet its obligations as a market intermediary and on the protection of the customer funds held by the FCM.

The Commission is cognizant of the commenters' desire for more precise guidance on when notices must be filed under § 1.12(k) and (l). However, FCMs represent a broad range of entities, with diverse business models. In this regard, some FCMs are small operations with a minimum level of capital, and others are highly capitalized entities with more sophisticated operations. Some FCMs focus on retail and/or agricultural clients, and others focus exclusively on institutional clients. Some FCMs are standalone entities that do not engage in proprietary or securities trading, and others are dually-registered with the SEC as BDs and engage in a significant amount of securities transactions for both their proprietary and customer accounts.

With FCMs covering such a broad and diverse spectrum of business organizations and models, the Commission does not believe that it would be appropriate to define by regulation the scenarios that are material to an FCM and would automatically require the filing of a regulatory notice. Instead, the regulation has been developed to allow each FCM to assess whether any particular or unique event is material to the specific firm. In making this determination, each FCM should assess the potential impact that an event may have on the FCM. This would include whether new lines of business would result in a significant increase in the firm's capital requirement or otherwise result in a significant additional financial or operational risk to the FCM's existing business, or whether the change in credit terms will significantly impact

[96] *Id.*

[97] RJ O'Brien Comment Letter at 10 (Feb. 15, 2013).

[98] FIA Comment Letter at 38 (Feb. 15, 2013).

[99] *Id.*

[100] Regulation 1.12(k) and (l) both require an FCM to report a material change in the firm's creditworthiness or its ability to fund its obligations. Accordingly, the Commission is removing the reference to the FCM's credit arrangements in § 1.12(l).

the liquidity resources available to the FCM.

The Commission also considered the comment that FCMs should not be required to report to the Commission changes in senior management as such information is reported to NFA. The Commission does not agree with this comment. As previously noted, the § 1.12 notice provisions are intended to provide the Commission and DSROs with prompt notice of material events at FCMs that will allow the Commission and DSROs to monitor the impact of such material events on FCMs and to factor such events into the risk assessment of the firm as part of their respective surveillance programs. The resignation or appointment of a new chief executive officer or chief risk officer at an FCM is a material change at an FCM and is information that should be reported to enhance the Commission's and DSRO's understanding of the firm's operations and the assessment of risk at the FCM.

7. Notice of Correspondence From Other Regulatory Authorities

The Commission proposed to add a new paragraph (m) to § 1.12 to require an FCM that receives a notice, examination report, or any other correspondence from a DSRO, the SEC, or a securities self-regulatory organization to immediately file a copy of such notice, examination report, or correspondence with the Commission. The Commission stated in proposing § 1.12(m) that the receipt of such notices, examination reports, or correspondence is necessary for the Commission to conduct appropriate oversight of FCMs.

The Commission received several comments that expressed a general concern that the language of the proposal is overbroad.[101] FIA noted that FCMs receive regular, and often routine, correspondence from their DSROs and that the amount of correspondence is multiplied for FCMs that are also registered as BDs and receive similar correspondence from their securities SROs and the SEC.[102] NFA agreed with the Commission that notices of material regulatory actions would provide the Commission and the DSROs with important information to carry out their oversight responsibilities, but also encouraged the Commission to reconsider the breadth of the proposal.[103] NFA noted that with respect to futures examinations reports, it already files such reports with the Commission's Division of Swap Dealer and Intermediary Oversight.[104] NFA also requested that the Commission clarify that FCMs would not have to file notices of public regulatory actions taken by futures SROs against an FCM because NFA already provides the complaint associated with these actions to the Commission and makes the action available on NFA's BASIC system.[105] TD Ameritrade recommended that the Commission limit notification to items that pertain to financial responsibility rules.[106]

The Commission notes that it was not its intention to require an FCM to file with the Commission routine or non-material correspondence from regulators or SROs. Regulation 1.12 in general is intended to provide the Commission with information regarding an FCM's interaction with its other regulators regarding the regulators' examinations and other material communications with FCMs. The Commission would use such information to enhance its understanding of the firm and its compliance with regulatory requirements to assess the operations of the firm and learn of events that may present a potential adverse impact on the firm, including its ability to properly operate in a regulated environment or otherwise safeguard customer funds.

The Commission is revising final § 1.12(m) to require an FCM to file notice with the Commission: (1) if the FCM is informed by the SEC or a SRO that it is the subject of a formal investigation; (2) if the FCM is provided with an examination report issued by the SEC or a SRO, and the FCM is required to file a copy of such examination report with the Commission; and (3) if the FCM receives notice of any correspondence from the SEC or a securities SRO that raises issues with the adequacy of the FCM's capital position, liquidity to meet its obligations or otherwise operate its business, or internal controls. The Commission believes that the revised regulation will provide the Commission with information necessary for the effective oversight of FCMs and will minimize the notices that dual-registrant FCMs/BDs will have to file with the Commission.

8. Filing Process and Content

The Commission proposed to amend the process that an FCM uses to file the notices required by § 1.12. Currently, § 1.12 requires an FCM to provide the Commission and DSROs with telephonic and facsimile notice in some situations, and to provide written notice by mail in other situations. An FCM also is permitted, but not required, to file notices and written reports with the Commission and with its DSRO using an electronic filing system in accordance with instructions issued by, or approved by, the Commission.

The Commission proposed to amend § 1.12(n) to require that all notices and reports filed by an FCM with the Commission or with the FCM's DSRO must be in writing and submitted using an electronic filing system.[107] Each FCM currently uses WinJammer to file regulatory notices with the Commission and with the firm's DSRO. The proposed regulation further provides that if the FCM cannot file a notice due to the electronic system being inoperable, or for any other reason, it must contact the Commission's Regional office with jurisdiction over the firm and make arrangements for the filing of the regulatory notices with the Commission via electronic mail at a specially designated email address established by the Commission; *fcmnotices@cftc.gov*. The Commission also proposed to amend § 1.12(n) to require that each notice filed by an FCM, IB, or SRO under § 1.12 include a discussion of what caused the reportable event, and what steps have been, or are being taken, to address the reportable event. Additional amendments to § 1.12(b), (d), (e), (f) and (g) were proposed that were necessary and technical in nature, and primarily revise internal cross-references to the filing requirements in § 1.12(n).

The Commission received one comment on the proposed amendments to Regulation 1.12(n), specifically with respect to the requirement that notices under the regulation include a discussion of what caused the reportable event and what steps have been or will be taken to address the event.[108] CHS Hedging stated its concern that requiring such a discussion in the notice is at odds with the requirement that notices be filed immediately.[109]

The Commission has determined to adopt the amendments to § 1.12(n) and the technical and related amendments

[101] FIA Comment Letter at 39 (Feb. 15, 2013); TD Ameritrade Comment Letter at 3 (Feb. 15, 2013); RCG Comment Letter at 7 (Feb. 12, 2013); CHS Hedging Comment Letter at 3 (Feb. 15, 2013).

[102] FIA Comment Letter at 39 (Feb. 15, 2013).

[103] NFA Comment Letter at 10 (Feb. 15, 2013).

[104] *Id.* at 11.

[105] *Id.*

[106] TD Ameritrade Comment Letter at 3 (Feb. 15, 2013).

[107] The Commission's proposed amendment to require the electronic filing of reports applies to both registered FCMs and applicants for registration as FCMs. Applicants for FCM registration currently file regulatory notices with NFA using WinJammer.

[108] CHS Hedging Comment Letter at 3 (Feb. 15, 2013).

[109] *Id.*

in § 1.12(b), (d), (e), (f) and (g) as proposed. In the Commission's experience, in many cases an FCM has sufficient information to provide a notice of reportable event and the remedial steps that can be taken to mitigate future issues upon learning of the reportable event or very shortly thereafter. The Commission does not believe that the requirement to provide such information is at odds with the need to provide the information immediately. In the event that an FCM does not possess complete information on what caused the event, or the steps that have been taken or are being taken to address the event, it may revise its notice at a later date when it has more complete or accurate information. It is essential, however, that the Commission receives timely notice of early warning events, and compliance with the relevant notice time period should be an FCM's first priority. Accordingly, as noted in the Proposal, even if such information is not immediately readily available, the reporting entity may not delay the reporting of a reportable event.

9. Public Disclosure of Early Warning Notices

The Commission requested comment as to whether reportable events should be made public by the Commission, SROs, or FCMs and what the benefits and/or negative impact from public disclosure of such events would be. The Commission received several comments regarding the public disclosure of reportable events. Several commenters, including FHLB, the ICI, ACLI, BlackRock, and SIFMA believed that the Commission should mandate public disclosure of such information.[110] Two commenters, FIA and NFA, believed that such events should not be made public.[111] NFA did not believe any of the filings should be public, but emphasized that those events that are not subject to a formal public action particularly should not be subject to public disclosure.[112] FIA was concerned that without context, public disclosure of the notices would be subject to misinterpretation and could create an adverse market event.[113]

The Commission has considered the comments and has determined that regulatory notices filed under § 1.12 should not be made publicly available. The notices required under § 1.12 provide a mechanism whereby Commission and SRO staff are alerted to potential issues at an FCM. In order to fully assess the potential impact of a reportable event, Commission and SRO staff generally must contact the firm to obtain additional information, including up to date information on how the firm is addressing the matter that caused the reportable event to develop. If reportable events were disclosed to the public, they may not provide complete or current information. For example, an FCM may be required to file immediate notice that it was undersegregated at a point in time, but the notice may not contain information that the FCM has taken corrective action and is no longer in violation of the segregation requirements. The Commission also recognizes that many of the § 1.12 notices are required to be filed as a result of one-off processing errors or timing differences that trigger a reportable event but are immediately rectified by the FCM and do not indicate a failure of the FCM's control system nor the firm's ability to effectively operate as an FCM.

In addition, under § 1.12 FCMs that are dually registered BDs with the SEC are required to file with the Commission copies of certain regulatory notices that they are required to file with the SEC. The SEC, however, does not make such notices public. The Commission believes it is important to ensure consistency such that information that a firm must file with the SEC and that is otherwise not publicly disclosed is not made public by the Commission as a result of the firm also being required to file a notice with the Commission under § 1.12.

D. § 1.15: Risk Assessment Reporting Requirement for Futures Commission Merchants

Regulation 1.15 currently requires each FCM subject to the risk assessment reporting requirements to file certain financial reports with the Commission within 120 days of the firm's year end. The risk assessment filings include FCM organizational charts; financial, operational, and risk management policies, procedures, and systems maintained by the FCM; and, fiscal year-end consolidated and consolidating financial information for the FCM and its highest level material affiliate.

The Commission proposed to amend § 1.15 to require the financial information to be filed in electronic format. The Commission received no comments on the proposed amendments to § 1.15. The Commission is adopting the amendments as proposed. The Commission also has revised the final regulation to provide that the risk assessment filings should be filed via transmission using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission. The Commission will provide direction regarding how FCMs should file the risk assessment reports in a secure manner with the Commission prior to the effective date of the regulation.

E. § 1.16: Qualifications and Reports of Accountants

Regulation 1.16 addresses the minimum requirements a public accountant must meet in order to be recognized by the Commission as qualified to conduct an examination for the purpose of expressing an opinion on the financial statements of an FCM. Regulation 1.16(b) currently provides that the Commission will recognize a person as qualified if such person is duly registered and in good standing as a public accountant under the laws of the place of the accountant's principal office or principal residence.

The Commission proposed several amendments to enhance the qualifications that a public accountant must meet in order to conduct an examination of an FCM. Specifically, the Commission proposed to require that the public accountant must: (1) Be registered with the Public Company Accounting Oversight Board (''PCAOB''); (2) have undergone an examination by the PCAOB; and, (3) have remediated to the satisfaction of the PCAOB any deficiencies identified during the examination within three years of the PCAOB issuing its report.

The Commission also sought to enhance the quality of the public accountant's examination of an FCM by proposing to require that the examination be conducted in accordance with U.S. GAAS after full consideration of the auditing standards issued by the PCAOB. The Commission further sought to ensure that the FCM's governing body took an active role in the assessment and appointment of the public accountant by imposing an obligation on the governing body to evaluate, among other things, the accountant's experience auditing FCMs; the adequacy of the accountant's knowledge of the Act and Commission regulations; the depth of the accountant's staff; and, the independence of the accountant.

Additionally, the Commission proposed technical amendments to

[110] FHLB Comment Letter at 10 (Feb. 15, 2013); ICI Comment Letter at 7–8 (Jan. 14, 2013); ACLI Comment Letter at 4 (Feb. 15, 2013); BlackRock Letter at 3 (Feb. 15, 2013); and SIFMA Comment Letter at 2 (Feb. 21, 2013).

[111] NFA Comment Letter at 11 (Feb. 15, 2013); FIA Comment Letter at 38 (Feb. 15, 2013).

[112] NFA Comment Letter at 11 (Feb. 15, 2013).

[113] FIA Comment Letter at 38 (Feb. 15, 2013).

§ 1.16. The Commission proposed to amend § 1.16(f)(1)(i)(C) to require each FCM to submit its certified annual report to the Commission in an electronic format. The Commission also proposed to amend § 1.16(c)(2) to remove the requirement that the accountant manually sign the accountant's report, which would facilitate the electronic filing of the FCM's certified annual report with the Commission.

The proposed amendments to § 1.16, including a discussion of the comments received, are discussed below.

1. Mandatory PCAOB Registration Requirement

Regulation 1.16(b)(1) would continue to require a public accountant to be registered and in good standing under the laws of the place of the accountant's principal office or principal residence in order to be qualified to conduct examinations of FCMs. The Commission proposed to enhance the qualifications of public accountants by further requiring the public accountant to be registered with the PCAOB.

The PCAOB is a nonprofit corporation established by Congress under the Sarbanes-Oxley Act of 2002 (''SOX'') to oversee the audits of public companies and BDs of securities registered with the SEC in order to protect investors and the public interest by promoting informative, accurate, and independent audit reports.[114] The SEC has oversight authority over the PCAOB, including the approval of the PCAOB's rules, auditing and other standards, and budget.[115]

The Commission received several comments on the proposed amendments to Regulation 1.16, which are discussed below. The commenters, however, did not oppose the proposed PCAOB registration requirement. In addition, the Commission does not anticipate that the PCAOB registration requirement will present a significant issue to FCMs or public accountants. In this regard, only one public accountant that currently conducts examinations of FCMs is not registered with the PCAOB. PCAOB-registered public accountants conducted the examinations of 103 of the 104 registered FCMs based upon a review of the most current annual reports submitted by FCMs to the Commission. Accordingly, after considering the comments, the Commission is adopting the PCAOB registration requirement as proposed.

2. PCAOB Inspection Requirement

The Commission proposed to amend § 1.16(b)(1) to require that a public accountant must have undergone a PCAOB examination in order to be qualified to conduct examinations of FCMs. Section 104 of SOX requires the PCAOB to conduct an annual inspection of each registered public accountant that regularly provides audit reports for more than 100 public issuers each year.[116] Section 104 further requires public accountants that provide audit reports for 100 or fewer issuers to be inspected by the PCAOB no less frequently than once every three years.[117]

In addition, the Dodd-Frank Act amended SOX and vested the PCAOB with new oversight authority over the audits of BDs registered with the SEC.[118] The PCAOB was provided with the authority, subject to SEC approval, to determine the scope and frequency of the inspection of public accountants of BDs. The SEC also approved a PCAOB temporary rule implementing an inspection program for BDs.[119]

Several commenters raised issues with, or objected to, the proposal. Ernst & Young requested clarification that the term ''examination'' in proposed § 1.16(b)(1) referred to the ''inspections'' that are required under section 104 of SOX.[120] The Commission confirms that the term ''examination'' in proposed § 1.16 was intended to refer to the ''inspections'' required under section 104 of the SOX, and has revised the regulation accordingly.

Several commenters stated that the proposed inspection requirement would disqualify public accountants that were registered with the PCAOB, but had not yet undergone an inspection.[121] These commenters stated that the proposal would disqualify accounting firms that recently registered with the PCAOB, but due to the triennial inspections schedule may not be subject to a PCAOB inspection for almost three years.[122] Commenters also noted that certain PCAOB registered accounting firms may audit non-issuer BDs and may be subject to inspection under the PCAOB's temporary or permanent inspection program, but may not have been selected yet for inspection by the PCAOB.[123] The AICPA stated that, while any public accounting firm can register with the PCAOB, by law only accountants that audit public issuers or audit certain non-issuer BDs may be inspected by the PCAOB.[124] KPMG also stated that the requirement that accounting firms auditing an FCM must have undergone an inspection makes the rules governing the audits of FCMs more restrictive than the SEC rules governing the audits of BDs.[125] KPMG suggests that the Commission align the standards required of auditors of FCMs and BDs.[126]

The AICPA also stated that the Commission should permit a practice monitoring program (such as the AICPA peer review program) that evaluates and opines on an accounting firm's system of quality control relevant to the firm's non-issuer accounting and auditing practice as an alternative to the PCAOB inspection requirement.[127] The AICPA also stated that a robust process, such as the AICPA's peer review program, whereby a team of certified public accountants conducts a comprehensive evaluation of a public accountant's system of quality control and whose work is subject to the oversight and approval by a separate group of certified public accountants should be required rather than having one certified public accountant review another.[128]

The NFA also supported a temporary alternative to the PCAOB inspection requirement in order to ensure that public accountants that are unable to obtain a PCAOB inspection within the time period required by the Commission will not automatically be prohibited from conducting FCM examinations.[129] NFA recommended that the Commission specifically designate the AICPA's peer review program as the only peer review program that will be acceptable to alleviate any uncertainty as to whether a certified public

[114] Public Law 107–204, 116 Stat. 745 (July 30, 2002). *See also* section 101 of SOX.

[115] Sections 107 and 109 of SOX.

[116] Section 104(b)(1)(A) of SOX.

[117] Section 104(b)(1)(B) of SOX.

[118] Section 982 of the Dodd-Frank Act.

[119] *See* Public Company Oversight Board; Order Approving Proposed Temporary Rule for an Interim Program of Inspection Related to Audits of Brokers and Dealers, 76 FR 52996 (Aug. 24, 2011).

[120] Section 104 of SOX requires the PCAOB to conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with the provisions of the SOX, the rules of the PCAOB, the rules of the SEC, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving public issuers.

[121] Center for Audit Quality Comment Letter at 2 (Jan. 14, 2013); Deloitte Comment Letter at 2 (Jan. 14, 2013); Ernst & Young Comment Letter at 2 (Jan. 14, 2013).

[122] *Id.*

[123] Center for Audit Quality Comment Letter at 2 (Jan. 14, 2013); Deloitte Comment Letter at 2 (Jan 14, 2013).

[124] AICPA Comment Letter at 2 (Feb. 11, 2013).

[125] KPMG Comment Letter at 2 (Jan. 11, 2013).

[126] *Id.*

[127] AICPA Comment Letter at 3 (Feb 11, 2013).

[128] *Id.*

[129] NFA Comment Letter at 11 (Feb. 15, 2013).

accountant is ''qualified'' to conduct the peer review.[130]

As noted in the proposal, FCMs are sophisticated financial market participants that are entrusted with more than $182 billion of customers' funds.[131] FCMs intermediate futures customers activities and guarantee customers' financial performance to DCOs, other FCMs, and foreign brokers. In addition, FCMs are anticipated to hold significant amounts of Cleared Swaps Customer Collateral deposited to margin, secure or guarantee Cleared Swaps as more provisions of the Dodd-Frank Act are implemented. FCMs also may conduct proprietary futures and securities transactions, and handle business for securities customers in addition to futures customers. The sophistication of the futures markets and the Commission's regulations, coupled with the critical role played by FCMs in the futures market (and in the case of many of the largest FCMs, the securities markets) necessitates the engagement of competent and experienced accountants to conduct the examinations of FCMs.

The Commission believes that registration with the PCAOB and being subject to the PCAOB inspection program will help to ensure that accounting firms engaged to conduct audits of FCMs remain competent and qualified. The PCAOB inspection program involves the review of the accounting firm's compliance with PCAOB issued audit, quality control, independence and ethics standards.

In addition, the purpose of the PCAOB registration and inspection requirement in the final rule is not to ensure that the accounting firm's audits of FCMs are subject to inspection by the PCAOB. The Commission acknowledges that the PCAOB's primary jurisdiction and inspections are directed toward the audits of public issuers and BDs. However, the Commission's objective is to reasonably ensure the quality and competence of the public accountants engaged in the audits of FCMs. The Commission believes that such quality and competence may be assessed by the PCAOB inspecting the accounting firms' audit process for issuers and BDs, and is not dependent solely upon the inspection of the accounting firms' audits of FCMs.

The Commission further believes that its proposed PCAOB inspection requirement is consistent with the SEC's audit requirements for BDs. Any auditor of an SEC-registered BD must register with the PCAOB and will be subject to the PCAOB inspection program.

Moreover, the Commission believes that the imposition of a PCAOB inspection requirement provides several benefits over a peer review program. The PCAOB is an entity that was created by Congress and charged with improving audit quality, reducing the risks of audit failures in the U.S. public securities markets and promoting public trust. As previously noted, the PCAOB is subject to oversight by the SEC, which approves the PCAOB's rules, auditing and other standards, and budget. A peer review program, while providing many benefits in the oversight of the accounting profession, is overseen by the accounting industry and is not subject to oversight by a federal regulator, which the Commission believes is a key advantage of the PCAOB in the furtherance of the protection of customer funds.

The Commission also does not anticipate a significant impact on existing FCMs from the imposition of the PCAOB inspection requirement on public accountants. As noted above, 103 of the 104 FCMs currently are subject to examination by public accountants that are registered with the PCAOB. In addition, only six of the PCAOB-registered public accountants that conduct examinations of fourteen FCMs have not been subject to a PCAOB inspection at this time. However, all six of these firms have indicated in their PCAOB filings that they conduct audits of BDs and, therefore, will be subject at a future date to the PCAOB inspection program for the inspection of accountants that conduct audits of BDs.

The Commission, based upon the analysis above and further consideration of the comments, has determined to adopt the regulation as proposed. The Commission recognizes, however, that the audits of many FCMs with a year-end date of December 31, 2013 or later have already been initiated. Accordingly, the Commission has determined that the PCAOB registration requirement will apply for audit reports issued for the year ending June 1, 2014 or later so as not to unnecessarily interrupt the examinations that currently are in progress. The Commission also is adopting a December 31, 2015 compliance date for a PCAOB inspection. The deferred compliance date will provide public accountants with additional time to register with, and to be inspected by, the PCAOB. The compliance dates are discussed further in section III below.

3. Remediation of PCAOB Inspection Findings by the Public Accountant

The Commission proposed in § 1.16(b)(1) that any deficiencies noted during a PCAOB inspection must be successfully remediated to the satisfaction of the PCAOB within three years.

KPMG, the Center for Audit Quality, Deloitte, the AICPA, and PWC generally argued that it is not clear how the requirement that any deficiencies noted during the PCAOB exam must have been remediated to the satisfaction of the PCAOB would work or what it means.[132] The commenters also noted that the Commission's proposed requirement that the public accountant remediate any deficiencies noted in a PCAOB inspection report is more stringent than the SEC's requirements for auditors of BDs and public issuers. KPMG also asked who would make a determination of remediation as there is no procedure for the PCAOB to communicate such determinations to the public accountant or the public.[133] PWC also stated that reliance on the PCAOB inspection results was misplaced and that the PCAOB inspection comments are issued in the context of a constructive dialogue to encourage Certified Public Account (''CPA'') firms to improve their practices and procedures.[134] PWC further noted that disciplinary sanctions such as revocation of the firm's right to audit a public company or BD can only be made in the context of an adjudicative process in which the firm is afforded procedural rights.[135] Lastly, PWC asserted that the Commission's proposal would disqualify a firm without providing any of the procedural rights or safeguards established by SOX.[136]

The Commission has considered the comments and recognizes that the PCAOB inspection process does not involve a formal process for communicating that a public accountant has adequately remediated deficiencies identified during the PCAOB's last inspection. In addition, the Commission understands that the PCAOB may not always issue a report at the conclusion of an inspection, or that the report may contain both public and non-public sections.

In light of these comments, the Commission has determined to revise

[130] *Id.*

[131] The customer funds information is based upon the 1–FR–FCM reports and FOCUS Reports filed by FCMs for the month ending April 30, 2013.

[132] KPMG Comment Letter at 2–3 (Jan. 11, 2013); Center for Audit Quality Comment Letter at 2–3 (Jan. 14, 2013); Deloitte Comment Letter at 2–3 (Jan. 14, 2013); AICPA Comment Letter at 2 (Feb. 11, 2013); PWC Comment Letter at 2 (Jan. 15, 2013).

[133] KPMG Comment Letter at 2 (Jan. 11, 2013).

[134] *See* PWC Comment Letter at 2 (Jan. 15, 2013).

[135] *Id.*

[136] *Id.*

the final regulation by removing the requirement that a public accountant must remediate any deficiencies identified during a PCAOB inspection to the satisfaction of the PCAOB within three years of the inspection. The Commission is further revising § 1.16(b)(1) to provide that a public accountant that, as a result of the PCAOB disciplinary process, is subject to a sanction that would permanently or temporarily bar the public accountant from engaging in the examination of a public issuer or BD may not conduct the examination of an FCM. The Commission notes that the PCAOB has the authority to initiate a disciplinary action against a firm and its associated persons for failing to adequately address inspection findings or for other transgressions.

The Commission also is revising § 1.16(b)(4) to require the governing body of the FCM to review and consider the PCAOB's inspection reports of the public accountant as part of the governing body's assessment of the qualifications of the public accountant to perform an audit of the FCM. The governing body is in a position to request information from the public accountant regarding the PCAOB inspections and general oversight of the public accountant and should use such information in assessing the competency of the accountant to conduct an examination of the FCM. An FCM's governing body should be concerned if the PCAOB inspection reports indicate that the public accountant has significant deficiencies and should take such information into consideration in assessing the qualifications of the public accountant.

4. Auditing Standards

The Commission proposed to amend § 1.16(c)(2) to require that the public accountant's report of its examination of an FCM must state whether the examination was done in accordance with generally accepted auditing standards promulgated by the Auditing Standards Board of the AICPA (*i.e.,* U.S. GAAS), after giving full consideration to the auditing standards issued by the PCAOB. Commenters raised issues with the proposal noting that there is no existing reporting framework that requires the application of one set of auditing standards and the consideration of another set of auditing standards.[137] Deloitte noted that public accountants may be specifically engaged to conduct an audit of an entity under both PCAOB auditing standards and U.S. GAAS, but that there is no reporting framework for an audit under one set of auditing standards, after giving ''full consideration'' to a separate set of auditing standards.[138]

The Commission has reviewed the comments and has determined to revise the final regulation to provide that the accountant's report must state whether the examination of the FCM was conducted in accordance with the auditing standards issued by the PCAOB. The Commission acknowledges the fact that there is no reporting framework for public accountants to report on one set of auditing standards after giving full consideration to another set of auditing standards. Also, the Commission recognizes that the SEC has recently adopted final regulations to its Rule 17a–5 to require public accountants to use PCAOB standards in the examination of the financial statements of BDs.[139] Therefore, the Commission's amendments to § 1.16(c)(2) to require public accountants to use PCAOB standards in conducting the examination of the financial statements of an FCM is consistent with the SEC's revisions to its Rule 17a–5. The Commission also is setting a compliance date for public accountants to use PCAOB auditing standards for all FCM examinations with a year-end date of June 1, 2014 or later. The extended compliance date allows FCMs currently subject to an examination by a public accountant to complete the examination cycle without having the public accountant adjust the examination for the new PCAOB standards requirement. The June 1, 2014 compliance date also is consistent with the SEC's compliance date for revisions to Rule 17a-5 and, therefore, will allow FCMs that are dually-registered as FCMs/BDs to be subject to uniform CFTC and SEC requirements.[140] Compliance dates are discussed further in section III below.

5. Review of Public Accountant's Qualifications by the FCM's Governing Body

The Commission proposed to amend § 1.16(b) by adding new paragraph (4) which would require the FCM's governing body to ensure that a public accountant engaged to conduct an examination of the FCM is duly qualified to perform the audit. The proposed new paragraph further provided that the evaluation should include, among other things, the public accountant's experience in auditing FCMs, the public accountant's knowledge of the Act and Commission regulations, the depth of the public accountant's staff, and the public accountant's size and geographical location. The proposed requirements are intended to ensure that the FCM's governing body takes an active role in the assessment and appointment of the public accountant.

PWC requested clarification of the Commission's expectations for the criteria that would be expected to be used by the FCM's governing body for determining qualification. PWC stated that such clarification may be helpful so that a consistent framework for determining the qualifications is used across the industry and FCM governing bodies.[141]

The Commission has considered the comments and has determined to adopt the amendments as proposed. FCMs represent a diverse group of entities and business models. Some FCMs focus primarily on institutional clients and engage in securities transactions as their primary business. Other FCMs focus on retail customers and engage in no proprietary or securities transactions.

With such a wide range of business models, the Commission believes that it is not practical to provide a uniform set of criteria that each governing body of each FCM should use to assess the qualifications of a public accountant. In fact, such a standard list would go against the Commission's objective of ensuring that the governing body is actively reviewing the qualifications of the public accountant relative to the FCM's particular business model. The requirement is not intended to exclude regional or smaller public accountants from being qualified to conduct examinations, provided that the governing body is satisfied that the public accountant has the appropriate skill, knowledge, and other resources to effectively conduct an examination, and is otherwise in compliance with the qualification requirements in § 1.16.

The Commission also is revising final § 1.16(b)(4) in response to the comments received on proposed § 1.16(b)(1) that would have required that a public accountant remediate any findings issued by the PCAOB in its inspection report within 3 years of the issuance of the inspection report. As stated above, commenters noted that there is no formal mechanism to assess whether a public accountant has remediated any inspection findings to the satisfaction of

[137] Ernst & Young Comment Letter at 3 (Jan. 14, 2013); Deloitte Comment Letter at 1 (Jan. 14, 2013); PWC Comment Letter at 3 (Jan. 15, 2013); AICPA Comment Letter at 2 (Feb. 11, 2013); and KPMG Comment Letter at 3 (Jan. 11, 2013).

[138] Deloitte Comment Letter at 1 (Jan. 14, 2013).

[139] *Broker Dealer Reports,* 78 FR 51910 (Aug. 21, 2013).

[140] *Id.*

[141] PWC Comment Letter at 3 (Jan. 15, 2013).

the PCAOB. Accordingly, the Commission is revising § 1.16(b)(4) to provide that the governing body of the FCM should review the inspection report of the public accountant and discuss inspection findings as appropriate with the public accountant. Such reviews and discussions will provide additional information to the governing body that will allow it to better assess the qualifications of the public accountant to conduct an audit of the FCM.

6. Electronic Filing of Certified Annual Reports

The Commission proposed to amend § 1.16(f)(1)(i)(C) to require each FCM to submit its certified annual report to the Commission in an electronic format. The Commission also proposed to amend § 1.16(c)(2) to remove the requirement that the accountant manually sign the account's report, which will facilitate the electronic filing of the FCM's certified annual report with the Commission. The Commission received no comments on the above amendments and is adopting the amendments as proposed.

F. § 1.17: Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers

1. FCM Cessation of Business and Transfer of Customer Accounts if Unable To Demonstrate Adequate Liquidity

Section 4f(b) of the Act provides that no person may be registered as an FCM unless it meets the minimum financial requirements that the Commission has established as necessary to ensure that the FCM meets its obligations as a registrant at all times, which would include its obligations to customers and to market participants, including DCOs. The Commission's minimum capital requirements for FCMs are set forth in § 1.17 which, among other things, currently provides that an FCM must cease operating as an FCM and transfer its customers' positions to another FCM if the FCM is not in compliance or is not able to demonstrate its compliance with the minimum capital requirements.

The proposed amendments to § 1.17 authorize the Commission to request certification in writing from an FCM that it has sufficient liquidity to continue operating as a going concern. If an FCM is not able to immediately provide the written certification, or is not able to demonstrate adequate access to liquidity with verifiable evidence, the FCM must transfer all customer accounts and immediately cease doing business as an FCM.

The FIA stated that it agreed with the regulatory purpose underlying this proposed amendment, but stated that the Commission should not adopt the rule before it clearly articulates the objective standards by which it will determine that an FCM has ''sufficient liquidity.'' [142] Similarly, FCStone requested clarity with respect to the exigent circumstances that would give the Commission authority to require an FCM to cease operating.[143]

The Commission understands the concerns of commenters regarding the process by which the Commission, or the Director of the Division of Swap Dealer and Intermediary Oversight acting pursuant to delegated authority under § 140.91(6), could require immediate cessation of business as an FCM and the transfer of customer accounts; however, that same authority currently exists should a firm fail to meet its minimum capital requirement. The Commission believes the ability to certify, and if requested, demonstrate with verifiable evidence, access to sufficient liquidity to operate as a going concern to meet immediate financial obligations is a minimum financial requirement necessary to ensure an FCM will continue to meet its obligations as a registrant as set forth under section 4f(b) of the Act. Further, the Commission notes that the ''going concern'' standard is well defined in accounting literature and practice, and generally means an ability to continue operating in the near term.

The proposed liquidity provision is intended to cover circumstances that require immediate attention and would provide the Commission with a means of addressing exigent circumstances by requiring an FCM to produce a written analysis showing the sources and uses of funds over a short period of time not to exceed one week. The purpose of the provision is to address situations where an FCM may currently be in compliance with minimum financial requirements, but lacks liquidity to meet pending, non-discretionary obligations such that the firm's ability to continue operating in the near term is in serious jeopardy. In such a situation, it is expected that the Commission and the FCM's DSRO and applicable DCOs would be in frequent communication with the firm to review the FCM's options and plans to continue operating as a going concern and to assess what actions were necessary to ensure the firm continues to meet its obligations as a market intermediary and to protect customer funds. If an FCM's management cannot in good faith certify that the FCM has sufficient liquidity to permit it to operate throughout the following week, then the FCM has failed to meet its minimum financial requirements necessary to ensure that the firm will continue to meet its obligations as a registrant and the Commission would have to determine how to minimize the impact of a potential FCM insolvency or default.

The Commission has considered the comments and has determined to adopt the amendments as proposed.

2. Reducing Time Period for FCMs To Incur a Capital Charge for Undermargined Accounts to One Day After Margin Calls Are Issued

Regulation 1.17 requires an FCM to incur a charge to capital for customer and noncustomer accounts that are undermargined beyond a specified period of time.[144] Regulation 1.17(c)(5)(viii) currently requires an FCM to reduce its capital (*i.e.,* take a capital charge) if a customer account is undermargined for three business days after the margin call is issued.[145] Regulation 1.17(c)(5)(ix) requires an FCM to take a capital charge for noncustomer and omnibus accounts that are undermargined for two business days after the margin call is issued.

The Commission proposed to amend § 1.17(c)(5)(viii) and (ix) to require an FCM to take capital charges for undermargined customer, noncustomer, and omnibus accounts that are undermargined for more than one business day after a margin call is issued. Thus, for example, under the proposal, if an account carried by an FCM became undermargined on Monday, the operation of the regulation assumes that the FCM would issue a margin call on Tuesday, and the FCM would have to incur a capital charge at the close of business on Wednesday if the margin call was still outstanding.

Vanguard commented that it supported the Commission's proposal, stating that the accelerated timetable makes sense given modern trading and asset transfer timing.[146] Vanguard further stated that each customer must stand up for its trades and promptly post margin, and it further stated that it believes the overall market may be weakened to the extent an FCM is

[142] FIA Comment Letter at 8 (Feb. 15, 2013).

[143] FCStone Comment Letter at 4 (Feb. 15, 2013).

[144] Noncustomers are defined in § 1.17(b)(4) as accounts carried by the FCM that are not customer accounts or proprietary accounts. Noncustomer accounts are generally accounts carried by an FCM for affiliates and certain employees of the FCM.

[145] For purposes of these Commission regulations, a margin call is presumed to be issued by the FCM the day after an account becomes undermargined.

[146] Vanguard Comment Letter at 7 (Feb. 22, 2013).

extending significant amounts of credit over an extended period to cover a customer's margin deficit.[147]

MFA objected to the proposal noting that, while in the ordinary course of business, few margin calls remain outstanding for more than two business days, the proposal does recognize the practical reasons why a margin call may be outstanding more than 2 business days after the call issued.[148] MFA cited disputes between an FCM and its customer as to the appropriate level of margin, and good faith errors that may cause a delay beyond 2 days for a margin call to be met.[149] MFA also stated that an increase in costs resulting from the regulation will ultimately be passed on the customers.

The NCBA stated that the proposal may require market participants to use wire transfers in lieu of checks, which will increase the costs and impose a significant financial burden to the cattle industry.[150] The NCBA also stated that the proposal will cause customers to prefund their accounts for anticipated margin requirements, which will reduce customers' capital and impede their other business operations.[151] The NCBA further noted that the proposal is not related to the MFGI and PFGI failures, which were not caused by customers failing to meet margin calls.[152]

JSA stated that an effective increase in a capital charge for undermargined customer accounts could cause an increase in requirements for customers to prefund their accounts, which would be punitive in a highly competitive environment that already places midsized FCMs and FCMs that are not affiliated with a banking institution at a disadvantage to larger, more highly capitalized firms, or FCMs that are affiliated with banking institutions.[153] JSA also stated that if smaller FCMs are forced out of the market, larger FCMs or FCMs affiliated with banks may not be willing to service customers that are farmers, ranchers, retail, or introduced brokerage accounts, for which they have historically shown little interest.[154]

FIA stated that while institutional and many commercial market participants generally meet margin calls by means of wire transfers, the proposal, creates operational problems because it does not consider delays arising from accounts located in other time zones that cannot settle same day, or ACH settlements, or the requirement to settle or convert certain non-U.S. dollar currencies.[155] FIA also stated that a substantial number of customers that do not have the resources of large institutional customers (in particular members of the agricultural community) depend on financing from banks to fund margin requirements, which may require more than one day to obtain.[156]

RJ O'Brien stated that it recognized that the collection of margin is a critical component of an FCM's risk management program, however, it objected to the proposed amendment.[157] RJ O'Brien stated that as the largest independent FCM serving a client base that includes a great number of farmers and ranchers, it is well aware that many customers that use the markets to hedge commercial risk still meet margin calls by check or ACH because of the impracticality and costliness of wire transfers in their circumstances.[158] RJ O'Brien stated that in many cases, the costs of a wire transfer would exceed the transaction costs paid by the client to its FCMs, and additionally, that some customers in the farming and ranching community finance their margin calls, which can require additional time to arrange for delivery of margin call funds due to routine banking procedures.[159]

RJ O'Brien also stated that if the proposal is adopted, FCMs that service non-institutional clients will struggle to remain competitive and the proposal may result in fewer clearing FCMs and greater systemic risk to the marketplace.[160] RJ O'Brien further stated that many of the larger FCM/BDs likely have little interest in servicing smaller rancher and farmer clients, as was evidenced in the wake of MFGI's failure, and that a loss of such smaller FCMs will result in fewer options available to these ranchers, farmers and other commercial market participants that wish to hedge their commercial risks.[161]

TD Ameritrade stated that it did not support the proposed amendments to § 1.17(c)(5)(viii) and (ix) as it would impose financial hardships on customers that the Proposal was intended to protect.[162] TD Ameritrade stated that a large number of retail customers do not currently use wire transfers to meet a margin requirement in one business day.[163] TD Ameritrade also noted that non-U.S. customer accounts are faced with time zone differences and inherent delays in meeting margin calls.[164]

Other commenters expressed the general concern that the proposal will harm the customers it is meant to protect by requiring more capital to be kept in customer accounts, possibly forcing users to hold funds at FCMs well in excess of their margin requirements, or resulting in certain segments of the market to forego the futures markets to hedge their commercial operations.[165] Those commenters argued that such pre-funding could add significant financial burdens to trading as customers find themselves having to provide excess funds to their brokers which could increase their risk with regard to the magnitude of funds potentially at risk in the event of future FCM insolvencies.[166] The commenters general expressed significant concerns that reducing margin calls to one day will harm many customers as: (1) Many small businesses, farmers, cattle producers and feedlot operators routinely pay by check and forcing them to use wire transfers increases their cost of doing business; (2) clients who make margin calls by ACH payments instead of wire transfers because ACH is cheaper, would no longer be able to do so because there is a one-day lag in availability of funds; and (3) foreign customers would not be able to make margin calls due to time zone differences, the time required to convert certain non-USD currencies, and for

[147] *Id.*

[148] MFA Comment Letter at 7 (Feb. 15, 2013).

[149] *Id.*

[150] NCBA Comment Letter at 2 (Feb. 15, 2013).

[151] *Id.*

[152] *Id. See also* JSA Comment Letter at 2 (Feb. 15, 2013) and ICA Comment Letter at 1–2 (Feb. 15, 2013).

[153] JSA Comment Letter at 2 (Feb. 15, 2013). *See also* Frontier Futures Comment Letter at 2–3 (Feb. 14, 2013).

[154] *Id.*

[155] FIA Comment Letter at 26 (Feb. 15, 2013).

[156] *Id.*

[157] RJ O'Brien Comment Letter at 3–4 (Feb. 15, 2013).

[158] *Id. See also* RCG Comment Letter at 5 (Feb. 12, 2013). RCG also recommended that the Commission implement a pilot program that requires FCMs to provide the Commission with daily undermargined reports. The Commission does not believe that a pilot program is necessary for gathering additional information.

[159] *Id.*

[160] *Id.*

[161] *Id.*

[162] TD Ameritrade Comment Letter at 3–4 (Feb. 15, 2013).

[163] *Id.*

[164] *Id.*

[165] NPPC Comment Letter at 2 (Feb. 14, 2013); RCG Comment Letter at 4–5 (Feb. 12, 2013); NGFA Comment Letter at 3 (Feb. 15, 2013); NEFI/PMAA Comment Letter at 3 (Jan. 14, 2013); AIM Comment Letter at 15 (Jan. 24, 2013); Amarillo Comment Letter at 1 (Feb. 14, 2013); NCFC Comment Letter at 1 (Feb. 15,2013); NFA Comment Letter at 12–13 (Feb. 15, 2013); FCStone Comment Letter at 3 (Feb. 15, 2013); Advantage Comment Letter at 1–2 (Feb. 15, 2013); AFBF Comment Letter at 2 (Feb. 15, 2013); CCC Comment Letter at 2 (Feb. 15, 2013); Steve Jones Comment Letter at 1 (Feb. 14, 2013); ICA Comment letter at 1–2 (Feb. 15, 2013);TCFA Comment Letter at 1–2 (Feb. 15, 2013); CME Comment Letter at 5 (Feb. 15, 2013). AIM resubmitted the comment letters of Premier Metal Services, NEFI/PMAA, and the ISRI and indicated its support for the recommendations therein (Jan. 14, 2013).

[166] *Id.*

whom banking holidays fall on different days.[167]

The CCC stated that the proposed amendment to the capital rule places an undue burden on the FCMs, which will likely result in FCMs demanding that customers prefund trades to prevent market calls and potential capital charges.[168] The CCC also stated that the proposal could result in forced liquidations of customer positions to ensure that the FCM does not incur a capital charge.[169]

FIA and RJ O'Brien provided alternatives to the Commission's proposal. Both FIA and RJ O'Brien offered that an FCM be required to take a capital charge for any customer margin deficit exceeding $500,000 that is outstanding for more than one business day.[170] FIA further suggested that if the customer's margin deficit is $500,000 or less, the FCM should take a capital charge if the margin call is outstanding two business days or more after the margin call is issued.[171] RJ O'Brien's comment letter does not address the timing of the capital charge for accounts with a margin deficit of $500,000 or less.

NFA, FIA, MFA and AIMA stated that if the Commission adopts the amendments regarding residual interest as proposed, then the Commission should consider whether a capital charge for undermargined accounts remains necessary at all because the FCM will have already accounted for an undermargined account by maintaining a residual interest sufficient at all times to exceed the sum of all margin deficits; hence the capital charges related to an undermargined account appear to impose an additional financial burden without any necessary financial protection.[172]

RJ O'Brien also stated that the Commission should provide at least a one-year period of time for any changes to the timeframe for taking a capital charge for undermargined accounts to be effective.[173] RJ O'Brien stated that FCMs will need to educate and develop systems to assist their clients in meeting margin calls in an expedited timeframe.[174] Lastly, RJ O'Brien stated that the Commission should require futures exchanges to increase their margin requirements to 135% of maintenance margin to reduce the number and frequency of margin calls.[175]

With respect to the reduction of the timeframe in § 1.17(c)(5)(viii) for an FCM to incur a capital charge for undermargined customer accounts, the Commission has considered the comments and has determined to adopt the amendments as proposed. The timely collection of margin is a critical component of an FCM's risk management program and is intended to ensure that an FCM holds sufficient funds deposited by customers to meet their potential obligations to a DCO. As guarantor of the financial performance of the customer accounts that it carries, the FCM is financially responsible if the owner of an account cannot meet its margin obligations to the FCM and ultimately to a DCO.

The timeframe for meeting margin calls currently provided in § 1.17(c)(5)(viii) was established in the 1970s when the use of checks and the mail system were more prevalent for depositing margin with an FCM. However, in today's markets, with the increasing use of technology, 24-hour-a-day trading, and the use of wire transfers to meet margin obligations, the Commission believes that the timeframe for taking a capital charge should be reduced both to give an incentive to FCMs to exercise prudent risk management and to strengthen the financial protections of FCMs, and to enhance the safety of the clearing systems and other customers by requiring FCMs to reserve capital for undermargined customer accounts that fail to meet a margin call on a timely basis.

Several commenters have stated that the proposal would harm customers by increasing costs to customers or by exposing more of the customers' funds to the FCM.[176] The Commission notes that the final regulation provides for at least two full days from the point in time that a customer's account is undermargined to the time the FCM is required to incur a capital charge for the undermargined account. Under the regulation, if a customer's account becomes undermargined at some point before close of business on Monday, the FCM will have until the close of business on Wednesday before it is required to take a capital charge. Customers are responsible for monitoring the activity in their account and should have information that would allow them to determine that their trading account is undermargined prior to the close of business on Monday.

The alternative proposed by FIA and RJ O'Brien is premised on their belief that the regulation would not provide an adequate amount of time for a customer to meet a margin call before the FCM would have to take a capital charge for an undermargined account. As noted above, the Commission believes that the regulation, which provides at least two full business days for a customer to fund its undermargined account, does provide an adequate period of time for margin calls to be met. In situations involving customers located in foreign jurisdictions and the associated issues of time zone differences and differences in banking holidays, the Commission believes that the FCM should include such factors in its risk management program and operating procedures with such customers in an effort to ensure compliance with the regulations.

The Commission believes that the time period provided in § 1.17(c)(5)(viii) is adequate in most situations for a customer to receive and fund a margin call. The intent of margin is to ensure that a customer maintains a sufficient amount of funds in its account to cover 99 percent of the observed market moves of its portfolio of positions over a specified period of time. Customers that maintain fully margined accounts are exposed to greater risk to the safety of their funds if other customer accounts carried by the FCM are undermargined. In order to provide greater protection to the customers that are fully margined or maintain excess margin on deposit, and to provide greater assurance that the FCM can continue to meet its financial obligations to DCOs, the Commission believes that the FCM should maintain a sufficient amount of capital to cover the potential shortfall in undermargined customers' accounts.

The Commission also has considered the comments on the proposed amendments to § 1.17(c)(5)(ix), which reduce the timeframe for an FCM to incur a capital charge on an undermargined noncustomer or omnibus account from two days after the call was issued to one day after the call was issued. The Commission notes that the majority of the comments addressed the undermargined charge on customer accounts, but considered the comments generally in reviewing the proposed amendments to § 1.17(c)(5)(ix).

The Commission has considered the proposal and is adopting the amendments to § 1.17(c)(5)(ix) as

[167] *Id.*

[168] CCC Comment Letter at 2–3 (Feb. 15, 2013).

[169] *Id.*

[170] FIA Comment Letter at 27 (Feb. 27, 2013); RJ O'Brien Comment Letter at 4 (Feb. 15, 2013).

[171] FIA Comment Letter at 27 (Feb. 15, 2013).

[172] NFA Comment Letter at 13 (Feb. 15, 2013); FIA Comment Letter at 26 (Feb. 15, 2013); MFA Comment Letter at 6–7 (Feb. 15, 2013); and AIMA Comment Letter at 3 (Feb. 15, 2013).

[173] RJ O'Brien Comment Letter at 4 (Feb. 15, 2013).

[174] *Id.*

[175] *Id.*

[176] *See, e.g.,* NCBA Comment Letter at 2 (Feb. 15, 2013); NGFA Comment Letter at 3–4 (Feb. 15, 2013).

proposed. As noted above, § 1.17(c)(5)(ix) applies to noncustomers and omnibus accounts carried by an FCM. Many of the concerns raised by the comments regarding the ability to fund a margin call under § 1.17(c)(5)(viii) do not apply to accounts held by an affiliate or an omnibus accounts. Such accounts should pay margin calls promptly and by wire transfer to reduce the potential exposure to the FCM resulting from undermargined accounts.

The Commission also believes that the amendments to § 1.17(c)(5)(viii) and (ix) are appropriate even if the Commission amends its regulations to require an FCM to maintain residual interest in segregated accounts in excess of the undermargined amount of customer accounts. The purpose of the capital rule is to ensure that an FCM maintains sufficient liquid assets to meet its obligations as a going concern. Proprietary funds held in segregated accounts that exceed the total obligation to customers are included in an FCM's capital computation. However, in situations where the FCM's residual interest in segregated accounts is covering an undermargined customer account, a capital charge is appropriate because the FCM's residual interest is necessary to cover potential market losses on the undermargined accounts.

3. Permit an FCM That Is Not a BD To Develop Policies and Procedures To Determine Creditworthiness

The Commissions proposed to amend § 1.17(c)(v) to permit an FCM that is not a BD to develop a framework to establish, maintain and enforce written policies and procedures for determining creditworthiness of commercial paper, convertible debt, and nonconvertible debt instruments that are readily marketable. In recommending the proposal, the Commission noted that the SEC proposed to permit a BD to establish written policies and procedures to assess the credit risk of commercial paper, convertible debt, and nonconvertible debt instruments that are readily marketable.[177]

Under both the Commission's proposal and the SEC's proposal, an FCM or BD would assess the security's credit risk using the following factors, to the extent appropriate:

- Credit spreads (*i.e.,* whether it is possible to demonstrate that a position in commercial paper, nonconvertible debt, and preferred stock is subject to a minimal amount of credit risk based on the spread between the security's yield and the yield of Treasury or other securities, or based on credit default swap spreads that reference the security);
- Securities-related research (*i.e.,* whether providers of securities-related research believe the issuer of the security will be able to meet its financial commitments, generally, or specifically, with respect to securities held by the FCM or BD);
- Internal or external credit risk assessments (*i.e.,* whether credit assessments developed internally by the FCM or BD or externally by a credit rating agency, irrespective of its status as an NRSRO, express a view as to the credit risk associated with a particular security);
- Default statistics (*i.e.,* whether providers of credit information relating to securities express a view that specific securities have a probability of default consistent with other securities with a minimal amount of credit risk);
- Inclusion on an index (*i.e.,* whether a security, or issuer of the security, is included as a component of a recognized index of instruments that are subject to a minimal amount of credit risk);
- Priorities and enhancements (*i.e.,* the extent to which a security is covered by credit enhancements, such as overcollateralization and reserve accounts, or has priority under applicable bankruptcy or creditors' rights provisions);
- Price, yield and/or volume (*i.e.,* whether the price and yield of a security or a credit default swap that references the security are consistent with other securities that the FCM or BD has determined are subject to a minimal amount of credit risk and whether the price resulted from active trading); and
- Asset class-specific factors (*e.g.,* in the case of structured finance products, the quality of the underlying assets).

An FCM that maintains written policies and procedures and determines that the credit risk of a security is minimal is permitted under the proposal to apply the lesser haircut requirement currently specified in the SEC capital rule for commercial paper (*i.e.,* between zero and ½ of 1 percent), nonconvertible debt (*i.e.,* between 2 percent and 9 percent), and preferred stock (*i.e.,* 10 percent).

The CFA does not believe it is appropriate for FCMs to use internal models to determine minimum required capital.[178] The CFA believes that capital models should be established by the relevant regulatory agencies for use by FCMs or BDs.[179] It has serious concerns that internal models used for calculating minimum capital requirements are prone to failure in a crisis.[180] The CFA states that the regulatory agency should provide an objective and clear minimum risk-based capital baseline.[181]

As noted above, the SEC has proposed amendments to its net capital rule to allow BDs to take a lower net capital charge on certain securities based on the BDs' own determinations that certain securities have minimal credit risk, pursuant to the BDs having protocols for assessing the credit risk and maintaining appropriate documentations. If the SEC approves the proposal, the SEC capital charges would apply to an FCM that is dually-registered as an FCM/BD. In the absence of the Commission adopting a similar provision, certificates of deposit, bankers acceptances, commercial paper and nonconvertible debt securities held by standalone FCMs that have very low credit and market risk securities would be subject to the minimum default securities haircut of 15 percent.

The Commission proposed that standalone FCMs be permitted the same flexibility as FCM/BDs with respect to taking a lower capital charges for certain securities that may be determined to have minimal credit risk. The Commission also notes that based upon a review of Forms 1–FR–FCM filed with the Commission, standalone FCMs generally have limited investments in the types of securities that would be subject to the internal models, and such haircuts are not material to most standalone FCM's adjusted net capital.

The Commission has considered the proposal and is adopting the amendments as proposed.

4. Revisions to Definitions in Regulation 1.17(b)

The Commission proposed technical amendments to certain definitions in § 1.17(b)(2) and (7) to reflect proposed changes the term ''30.7 customer'' and to remove surplus language due to other revisions to the regulations. No comments were received on these proposed changes and the Commission is adopting the proposal as final.

Regulation 1.17(a) requires each FCM, in computing its minimum capital requirement, to include 8 percent of the risk margin required on futures and over the counter derivative instruments that the FCM carries in customer and non-

[177] The SEC has proposed rule amendments to implement the Dodd-Frank Act requirement to remove references to credit ratings in its regulations and substitute a standard for creditworthiness deemed appropriate. *See* 76 FR 26550 (May 6, 2011).

[178] CFA Comment Letter at 4–5 (Feb. 13, 2013).

[179] *Id.*

[180] *Id.*

[181] *Id.*

customer accounts. Regulation 1.17(b)(9) defines the term ''over the counter derivative instruments'' as those instruments set forth in 12 U.S.C. 4421. Section 740 of the Dodd-Frank Act, however, repealed 12 U.S.C. 4421.

The Commission, however, has not revised its capital requirements and continues to require FCMs to include over the counter derivative instruments that it carries in customer and non-customer accounts in their minimum capital computations. The Commission interprets § 1.17(b)(9) to require an FCM to include the types of derivative transactions or instruments that were previously set forth in 12 U.S.C. 4421 in its computation of its minimum capital requirement. The Commission also has directed staff to develop a rulemaking to amend Regulation 1.17(b)(9) to account for the repeal of 12 U.S.C. 4421.

G. § 1.20: Futures Customer Funds To Be Segregated and Separately Accounted for

Regulation 1.20 imposes obligations on FCMs, DCOs, and other depositories regarding the holding, and accounting for, customer funds. The Commission proposed to reorganize the structure of § 1.20 by providing additional subparagraphs to the existing specific requirements, and by applying headings to the regulation to assist in the reading and understanding of the regulation. The Commission also proposed new provisions discussed below to enhance the protection of customer funds.

1. Identification of Customer Funds and Due Diligence

The Commission proposed to amend § 1.20(a) to more clearly define the requirements regarding how FCMs must hold customer funds. Proposed paragraph (a) of § 1.20 requires an FCM to separately account for all futures customer funds and to segregate futures customer funds from its own funds. The proposed amendments further provide that an FCM shall deposit customer funds with a depository under an account name that clearly identifies the funds as futures customer funds and shows that the funds are segregated as required by the Act and Commission regulations. Proposed paragraph (a) also provides that an FCM must perform due diligence of each depository holding customer segregated funds (including depositories affiliated with the FCM), as required by new § 1.11, and to update its due diligence on at least an annual basis.

Proposed paragraph (a) also provides that an FCM must maintain at all times in the separate account or accounts funds in an amount at least sufficient in the aggregate to cover its total obligations to all futures customers. Proposed paragraph (a) further provides that an FCM computes its ''total obligations'' to futures customers as the aggregate amount of funds necessary to cover the Net Liquidating Equities of all futures customers as set forth in paragraph § 1.20(i).

The Commission stated in the Proposal that it is not sufficient for an FCM to be in compliance with its segregation requirement at the end of a business day, but fail to hold sufficient funds in segregation to meet the Net Liquidating Equities of each of its customers on an intra-day basis. This provision explicitly clarifies the Commission's long-standing interpretation of existing statutory and regulatory requirements on how FCMs must hold customer funds. Section 4d(a)(2) of the Act requires an FCM to treat and deal with all money, securities, and property received by the FCM to margin, guarantee, or secure the trades or contracts of any customer of the FCM, or accruing to such customer as the result of such trades or contracts, as belonging to such customer. Section 4d(a)(2) further provides that funds belonging to a customer must be separately accounted for by the FCM and may not be commingled with the funds of the FCM or be used to margin or guarantee the trades or contracts, or extend the credit, of any customer or person other than the customer for whom the FCM holds the funds. The separate treatment of customer funds is further set forth in § 1.22 which provides that no FCM shall use, or permit the use of, the funds of one customer to purchase, margin, or settle the trades, contracts, or commodity options of, or to secure or extend the credit of, any person other than such customer. Therefore, the current statutory and regulatory regime requires an FCM to maintain at all times a sufficient amount of funds in segregation to cover the full amount of the firm's obligations to its customers (*i.e.,* the aggregate Net Liquidating Equity of each customer) to prevent the FCM from using the funds of one customer to margin or guarantee the commodity interests of other customers, or to extend credit to other customers.

In its letter, the FIA stated that ''[t]he Commission has stated, and [FIA] agrees, that FCMs are required to comply with the segregation provisions of the Act at all times.'' [182] FIA further cited to a Commission 1998 rulemaking where the Commission stated the segregation rules require compliance at all times.[183] If an FCM is not in compliance with its obligation to maintain a sufficient amount of funds in segregation to meet the Net Liquidating Equities of all of its customer on an intra-day basis, the FCM would be using the funds of one customer to margin positions of another customer, or to cover the losses of another customer in violation of section 4d of the Act and Commission regulations.

The Commission did not receive any comments on revised paragraph (a) and is adopting the amendments as proposed.

2. Permitted Depositories

Proposed paragraph (b) of § 1.20 lists the permitted depositories for futures customer funds as any bank, trust company, DCO, or another FCM, subject to compliance with the FCM's risk management policies and procedures required in new § 1.11. The Commission did not propose changes to the list of permitted depositories for FCMs. The Commission did not receive any comments on paragraph (b) and is adopting the amendments as proposed.

3. Limitation on the Holding of Futures Customer Funds Outside of the United States

Proposed paragraph (c) of § 1.20 provides that an FCM may hold futures customer funds in depositories outside of the U.S. only in accordance with the current provisions of § 1.49. The Commission received no comments on paragraph (c) and is adopting the amendments as proposed.

4. Acknowledgment Letters

a. Background

Proposed paragraph (d) of § 1.20 would require an FCM to obtain a written acknowledgment from each bank, trust company, DCO, or FCM with which the FCM opens an account to hold futures customer funds, with the exception of a DCO that has Commission-approved rules providing for the segregation of such funds. Similarly, proposed § 1.20(g)(4) would require a DCO to obtain a written acknowledgment from each depository prior to or contemporaneously with the opening of a futures customer funds account. Paragraphs (d) and (g) further enumerate requirements for acknowledgment letters, expanding upon the requirements set forth in current § 1.20. Proposed § 1.26, which would require an FCM or DCO that

[182] FIA Comment Letter at 2 (Jun 20, 2013). In addition, FIA expressed its agreement with the existing requirement for an FCM to maintain sufficient funds in segregation at all times to cover its total obligation to its customers.

[183] *Id.* (citing 63 FR 2188, 2190 (Jan. 14, 1998)).

invests customer funds in instruments described in § 1.25 to obtain an acknowledgment letter from the depository holding such instruments,[184] and proposed § 30.7(c)(2), which would require an FCM to obtain an acknowledgment letter from each depository with which it opens an account to hold funds on behalf of its foreign futures and foreign options customers, are consistent with proposed § 1.20(a) and (g)(4). The Commission proposed to repeal and replace § 30.7(c)(2), but retain the requirement to obtain an acknowledgment letter in proposed § 30.7(d).

The Commission has proposed amendments to the acknowledgment letter requirements in §§ 1.20, 1.26, and 30.7 in three separate notices of proposed rulemaking, the first being published on February 20, 2009 (the ''Original Proposal'').[185] The Original Proposal set out specific representations that would have been required to be included in all acknowledgment letters in order to reaffirm and to clarify the obligations that depositories incur when accepting customer funds.

In light of the comments on the Original Proposal, in 2010 the Commission re-proposed the amendments with several changes made in response to comments (the ''First Revised Proposal'').[186] As part of the First Revised Proposal, the Commission proposed the required use of standard template acknowledgment letters, which were included as Appendix A to each of §§ 1.20 and 1.26, and Appendix E to part 30 of the Commission's regulations (referred to herein as the ''Template Letters'').

The Commission received nine comment letters on the First Revised Proposal. In general, the commenters were supportive of the First Revised Proposal and, in particular, were very supportive of requiring the use of Template Letters. It was noted by certain commenters that use of a standard letter would simplify the process of obtaining an acknowledgment letter. In addition, commenters were in agreement that uniformity of acknowledgment letters would provide consistency and greater legal certainty across the commodities and banking industries.

The Commission proposed further refinements to the acknowledgment letter requirements in 2012 to address several issues that had arisen in the context of the MFGI and PFGI failures and their adverse impact on customers of those FCMs (''Second Revised Proposal'').[187] In the Second Revised Proposal, the Commission also addressed comments it had received in response to the First Revised Proposal and incorporated related changes to the Template Letters.

The Commission received 15 comment letters related to the Template Letters in response to the Second Revised Proposal.[188] Again, the commenters were generally supportive of the Commission's proposal and, in particular, were supportive of the mandatory use of Template Letters. The Depository Bank Group commented that the Template Letters will help ''facilitate a more efficient process for the establishment and maintenance of customer segregated accounts'' and clarify the rights and responsibilities of depositories.[189] Eurex noted that it appreciated the ''potential convenience'' and increased certainty and transparency afforded by the Template Letters.[190] CME supported the Commission's efforts to ''strengthen and standardize'' the Template Letters.[191]

While many of the comments were supportive of the Template Letters, FCStone expressed the view that ''prescriptive rules'' could drive participants out of the futures industry.[192] MGEX commented that the required use of a Template Letter appeared to be a ''dramatic shift'' from the current requirements and questioned whether depositories would be willing to sign the Template Letter due to the ''access and timing information requirements.''[193] RCG stated that early indications were that many depositories ''with extensive experience servicing FCMs'' are unwilling to sign the Template Letter and expressed concern that if such depositories refuse to sign, customer funds will become concentrated with depositories ''less experienced in carrying FCM accounts.''[194]

Regulation 1.20 in its current form already requires FCMs and DCOs to obtain acknowledgment letters, and the Commission believes that use of a standardized Template Letter will reduce negotiation costs, create efficiencies for Commission registrants as well as non-registrant depositories, provide greater legal certainty as to the rights and obligations of parties under the Act and CFTC regulations, and facilitate consistent treatment of customer funds across FCMs, DCOs, and depositories. In addition, the use of a standardized letter is the approach that has been proposed by the Financial Conduct Authority (''FCA'') in the United Kingdom (''U.K.'').[195]

The Commission has taken into consideration the comments and recommendations provided by FCMs, DCOs, and depositories, and it believes the final rules and Template Letters largely address the concerns they have expressed. The Commission's response to comments on the major issues raised by commenters is discussed by subject matter, below.

b. Technical Changes to the Template Letters

Proposed paragraphs (d)(2) and (g)(4)(ii) of § 1.20 would require FCMs and DCOs, respectively, to use the Template Letter set forth in Appendix A to § 1.20 when opening a customer segregated account with a depository. In response to the comments, and in recognition of the different functions FCMs and DCOs perform in relation to customer funds, the Commission has determined to finalize different versions of the Template Letters for FCMs and DCOs. The Template Letter specific to FCMs is being adopted as Appendix A to § 1.20, and the Template Letter for DCOs is being adopted as Appendix B to § 1.20. Paragraph (g)(4)(ii) has been revised to require DCOs to use the Template Letter in Appendix B.

Another change concerns the full account name as it appears in the Template Letter. Proposed § 1.20(a) and (g)(1) provides in part that customer funds shall be deposited ''under an account name that clearly identifies them as futures customer funds and shows that such funds are segregated as required by sections 4d(a) and 4d(b) of the Act and [part 1 of the Commission's regulations].'' Schwartz & Ballen noted that operational constraints limit the number of characters available for account names, and requested additional flexibility with regard to account titles ''so long as the accounts are clearly identified as custodial

[184] Section 22.5 applies the written acknowledgment requirements of §§ 1.20 and 1.26 to FCMs and DCOs in connection with depositing Cleared Swaps Customer Collateral in an account at a permitted depository.

[185] 74 FR 7838 (Feb. 20, 2009).

[186] 75 FR 47738 (Aug. 9, 2010).

[187] 77 FR 67866 (Nov. 14, 2012).

[188] Letters were submitted by Schwartz & Ballen, FIA, LCH.Clearnet, MGEX, the Federal Reserve Banks, NYPC, CME, the Depository Bank Group, Eurex, RJ O'Brien, RCG, NFA, FCStone, ICI, and Katten-FIA.

[189] Depository Bank Group Comment Letter at 2 (Feb. 15, 2013).

[190] Eurex Comment Letter at 1 (Aug. 1, 2013).

[191] CME Comment Letter at 7 (Feb. 15, 2013).

[192] FCStone Comment Letter at 5 (Feb. 15, 2013).

[193] MGEX Comment Letter at 3 (Feb. 18, 2013).

[194] RCG Comment Letter at 7 (Feb. 12, 2013).

[195] *See* Financial Conduct Authority, ''Review of the client assets regime for investment business,'' Consultation Paper CP13/5 (July 2013).

accounts held for the benefit of the FCM's customers.'' [196]

The Commission has modified the Template Letters to accommodate a depository's account titling conventions. The Commission will permit a depository to abbreviate the account name when the full name as set forth in the Template Letter is too long for a depository's operational system to include all characters, provided that (i) the Template Letter includes both the full and abbreviated account name(s) and (ii) the abbreviated account name clearly identifies the account as a Commission-regulated segregated/secured account that holds customer funds (*e.g.,* ''segregated'' may be shortened to ''seg;'' ''customer'' may be shortened to ''cust;'' ''account'' to ''acct;'' etc.).

FIA recommended several modifications to the Template Letters, including the addition of a clause to address banking practices used to provide third-party access to account information. As a result, the Commission has added the following language to the FCM Template Letter (and similar language to the other Template Letters): ''The parties agree that all actions on your part to respond to the above information and access requests will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information or access request, in order to provide for the secure transmission and delivery of the requested information or access to the appropriate recipient(s).''

In addition, the proposed Template Letters, as well as proposed §§ 1.20(d)(4) and (g)(4)(iv) and 30.7(d)(4), would require the depository to agree to provide a copy of the executed acknowledgment letter to the Commission at a specific email address. The email address has been deleted from the Template Letters, and the depository is now required to provide a copy to the Commission via electronic means in a format and manner determined by the Commission. The rule text has been revised accordingly (and § 1.20(g)(4)(iv) has been renumbered as § 1.20(g)(4)(iii)).

Finally, the Commission has made minor technical revisions to the Template Letters in the form of grammatical and stylistic changes to clarify meaning and provide consistency among the letters.

c. Federal Reserve Banks as Depositories

Pursuant to § 806(a) of the Dodd-Frank Act, the Board of Governors of the Federal Reserve System (the ''Board'') may authorize a Federal Reserve Bank to establish and maintain an account for systemically important DCOs (''SIDCOs'') that have been designated by the Financial Stability Oversight Council (''FSOC'') as systemically important financial market utilities (''Designated FMUs'').[197] In their comment letter, the Federal Reserve Banks stated: ''Absent clarification, the [Federal] Reserve Banks must assume that we would be treated as depository institutions under the proposed rules if we were to hold Designated FMU customer funds.'' The Federal Reserve Banks commented that they do not believe that they can accept all of the terms of the Template Letters given the ''unique nature of the [Federal] Reserve Banks and of Designated FMUs.'' [198]

The Federal Reserve Banks raised specific concerns with two terms of the Template Letters: (1) The provision authorizing the Commission to order the immediate release of customer funds; and (2) the provision that allows a depository to presume legality for any withdrawal of customer funds, provided the depository has no knowledge of, or could not reasonably know of, any violation of the law. The Federal Reserve Banks suggested that under ''exceptional circumstances, such as a prospective insolvency of the SIDCO that threatens customer funds,'' a Commission-authorized withdrawal would need to be considered in the context of a larger coordinated effort, which would include FSOC.[199] The Federal Reserve Banks further asserted that, due to their dual roles as both supervisory bodies and providers of financial services, coupled with the Board prohibition on sharing supervisory information with personnel performing financial services, the standard of liability leaves them in the ''untenable position of not being able to rely on the presumption of legality.'' [200]

The Commission is adopting, as proposed, § 1.20(g)(2), which confirms that the Federal Reserve Banks are depositories for purposes of section 4d of the Act and Commission regulations thereunder. Accordingly, a Federal Reserve Bank would be required to execute a written acknowledgment when it accepts customer funds from a SIDCO or other DCO for which it holds customer funds. However, the Commission recognizes the unique role of the Federal Reserve Bank and is therefore modifying proposed § 1.20(g)(4)(ii) to provide an exception for Federal Reserve Banks from the requirement that depositories accepting customer funds from DCOs execute the Template Letter in Appendix B to § 1.20. Rather, a Federal Reserve Bank will be required only to execute a written acknowledgment that: (1) It was informed that the customer funds deposited therein are those of customers who trade commodities, options, swaps, and other products and are being held in accordance with the provisions of section 4d of the Act and Commission regulations thereunder; and (2) it agrees to reply promptly and directly to any request from the director of the Division of Clearing and Risk or the director of the Division of Swap Dealer and Intermediary Oversight, or any successor divisions, or such directors' designees, for confirmation of account balances or provision of any other information regarding or related to an account.

The Commission is modifying proposed § 1.20(g)(2) from ''A [DCO] may deposit futures customer funds with a bank or trust company, which shall include a Federal Reserve Bank with respect to deposits of a systemically important [DCO]'' to ''A [DCO] may deposit futures customer funds with a bank or trust company, which may include a Federal Reserve Bank with respect to deposits of a [DCO] that is designated by the Financial Stability Oversight Council to be systemically important.'' Changing the phrase ''which shall include a Federal Reserve Bank'' to ''which may include a Federal Reserve Bank,'' avoids possible ambiguity as to whether the DCO is required to deposit futures customer funds with a Federal Reserve Bank. By revising the description of the DCO, the Commission has effectively captured any DCO, such as one that is also registered with the SEC as a clearing agency and has been designated to be systemically important in that capacity, which could hold customer funds at a Federal Reserve Bank.[201]

[196] Schwartz & Ballen Comment Letter at 8 (Feb. 15, 2013).

[197] Section 806(a) of the Dodd-Frank Act; *see also* Federal Reserve Banks Comment Letter at 1 (Feb. 22, 2013).

[198] Federal Reserve Banks Comment Letter at 2 (Feb. 22, 2013).

[199] *Id.* at 1.

[200] *Id.* at 2.

[201] For example, The Options Clearing Corporation is a registered DCO that has been designated as ''systemically important'' but is not a SIDCO as defined in § 39.2 of the Commission's regulations. A Federal Reserve Bank would be required to segregate customer funds and provide an acknowledgment letter under § 1.20 with respect

Continued

d. Foreign Depositories

In its comment letter, Eurex questioned whether foreign depositories could fully comply with the proposed regulations and execute the Template Letters, noting the probability of ''strong resistance'' by foreign depositories to providing the Commission with read-only electronic access to account information.[202] Eurex pointed to the ''detailed nature of the representations'' in the Template Letters and further expressed its belief that foreign depositories would not be permitted to legally execute the Template Letters.[203] Eurex recommended that the Commission consider alternative methods for achieving the goal of the Template Letters, such as authorizing Commission staff to ''accept alternate language'' from foreign depositories.[204] FIA commented that it had not discussed the Template Letters with foreign depositories and thus did not know whether the Template Letters would ''cause concern'' under a foreign jurisdiction's laws.[205]

The Commission appreciates these perspectives related to foreign depositories, but notes that the comments are of a general nature and do not provide any specific examples to support the commenters' assertions. The Commission did not receive a comment letter from any foreign depository holding customer funds.

As noted above, the FCA recently proposed the use of template acknowledgment letters for purposes of satisfying FCA acknowledgment letter requirements. The proposed letters are similar in many respects to the Template Letters the Commission is adopting herein, and FCA regulations would require both U.K. and non-U.K. depositories to execute the template acknowledgment letters.

The Commission recognizes that there may be valid reasons why some foreign depositories would require modifications to the Template Letters. In such circumstances, the Commission would consider alternative approaches, including no-action relief, on a case-by-case basis.

e. Release of Funds Upon Commission Instruction

As proposed, the Template Letters would require a depository to release funds immediately upon instruction from the director of the Division of Clearing and Risk, the director of the Division of Swap Dealer and Intermediary Oversight, or any successor divisions, or such directors' designees. The purpose of this provision was to enable the Commission to expeditiously carry out measures to protect customer funds in exceptional circumstances, such as the imminent bankruptcy of an FCM. Commenters expressed concerns about this requirement, citing liability that might arise from a depository acting or failing to act ''immediately,''[206] and the need for the depository to implement proper security and authorization procedures in connection with acting upon instructions from the Commission rather than the account holder.[207]

With respect to DCOs in particular, NYPC pointed out that a DCO normally holds customer funds in a segregated account without further subdivision by customer or clearing member and, as a result, a DCO would effectuate a transfer of customer funds from a defaulting clearing member to a non-defaulting clearing member by book entry on the DCO's books and records.[208] NYPC noted that no transfer of funds may be required if the DCO holds the funds at the same depository.

The Depository Bank Group commented that the term ''immediately'' may subject a depository to potential claims by FCMs, DCOs or the Commission in the event of a delay in the transfer of customer funds, even if such delay is the result of reasonable actions or events beyond the control of the depository.[209] As previously noted, the Federal Reserve Banks commented that during such ''exceptional circumstances'' in which instructions to transfer funds from a SIDCO's account would likely be made, the FSOC would be involved.[210] The Depository Bank Group, FIA, and Schwartz & Ballen all commented that the proposal is ''inconsistent'' with a depository's security policies and procedures.[211] CME requested that the Commission clarify the exceptional circumstances that would give rise to the Commission's request for an immediate release of customer funds and the impact such an instruction could have on the timely payment of obligations to a DCO.[212]

After considering the concerns raised by the commenters, the Commission has determined not to require depositories to agree to release or transfer customer funds upon its instruction. The Commission notes that in exceptional circumstances such as the imminent bankruptcy of an FCM, Commission staff would be in regular communication with the FCM, its DSRO, DCOs, and depositories in an effort to protect customer funds.

f. Read-Only Access and Information Requests

Proposed paragraphs (d)(3) and (g)(4)(iii) of § 1.20, proposed § 30.7(d)(3), and the proposed Template Letters, including the Template Letters for § 1.26 investments in money market mutual funds, would require depositories to provide the Commission with 24-hour, read-only electronic access to accounts holding customer funds. The Commission received eight comment letters on this requirement.

As a preliminary matter, FIA noted that significant time for development would be necessary to implement such a requirement.[213] Schwartz & Ballen observed that the read-only access approach conflicts with bank procedures used to provide account information to third parties, which typically involve allowing the customer to grant access to a third party, rather than the bank doing so.[214] The Depository Bank Group and FIA also pointed out that Commission staff would be required to comply with the depository's security policies and procedures.[215] The Depository Bank Group recommended that the Template Letters expressly authorize the depository to provide access to the Commission and suggested language that could be incorporated into the Template Letters.[216] RJ O'Brien agreed with the Depository Bank Group's position on read-only access.[217]

FCStone noted that time differences and geographic locations may make it difficult for foreign commodity brokers to satisfy the 24-hour-a-day requirement and respond promptly to requests made

to any customer account subject to section 4d of the Act and opened by The Options Clearing Corporation in its capacity as a DCO.

[202] Eurex Comment Letter at 1 (Aug. 1, 2013).

[203] *Id.* at 2.

[204] *Id.*

[205] FIA Comment Letter at 40 (Feb. 15, 2013).

[206] Depository Bank Group Comment Letter at 10.

[207] *Id.* at 11; Schwartz & Ballen Comment Letter at 2 (Feb. 15, 2013); Katten-FIA Comment Letter at 2 (Aug. 2, 2013).

[208] NYPC Comment Letter at 2 (Feb. 15, 2013).

[209] Depository Bank Group Comment Letter at 10 (Feb. 15, 2013).

[210] Federal Reserve Banks Comment Letter at 1 (Feb. 22, 2013).

[211] *Id.* at 11; Katten-FIA Comment Letter at 2 (Aug. 2, 2013); and Schwartz & Ballen Comment Letter at 5 (Feb. 15, 2013).

[212] CME Comment Letter at 7 (Feb. 15, 2013).

[213] FIA Comment Letter at 40 (Feb. 15, 2013).

[214] Schwartz & Ballen Comment Letter at 4 (Feb. 15, 2013).

[215] Depository Bank Group Comment Letter at 13 (Feb. 15, 2013); Katten-FIA Comment Letter at 2 (Aug. 2, 2013).

[216] Depository Bank Group Comment Letter at 13 (Feb. 15, 2013).

[217] RJ O'Brien Comment Letter at 11 (Feb. 15, 2013).

by the Commission.[218] The Depository Bank Group commented that often a bank denies access during routine maintenance to technology systems, and asked that the Commission remove the ''24-hour'' requirement.[219]

NYPC commented that, because DCOs hold customer funds on behalf of all their clearing members in omnibus accounts that are not further subdivided by each customer, the account information to which the Commission would have access at a DCO's depository ''would not provide the level of detail that would permit reconciliation between either the DCO's FCM clearing members or those clearing members' underlying customers.'' [220] In addition, Schwartz & Ballen contended that the requirement would not achieve the Commission's goal of quickly identifying discrepancies between FCM-reported balances and balances at a depository because the depository typically posts all credits and debits after the close of business.[221]

LCH.Clearnet recommended that the Commission consider ''alternative approaches'' for routine access to account balance information at depositories holding customer funds. For central banks, LCH.Clearnet suggested that the Commission should accept confirmation of balance information directly from the central bank in a form acceptable to the central bank, but it did not explain why central banks should be treated differently than other depositories. For other depositories, LCH.Clearnet believes the Commission should consider ''following the lead of the [NFA].'' [222]

NFA pointed out that its board of directors had adopted a financial requirements rule in August 2012.[223] NFA explained that instead of adopting a read-only access provision of its own in this rule, it instead chose to use, in conjunction with CME, an automated daily segregation confirmation system to monitor customer segregated and secured amount accounts and their balances.[224] NFA requested that the Commission rescind its proposed read-only access requirement.[225]

With the goal of achieving the highest degree of customer protection, the Commission has determined to adopt, with certain modifications, the requirement that a depository agree to provide the Commission with read-only access to accounts maintained by an FCM. Regulations 1.20(d)(3) and 30.7(d)(3) require the depository to agree to provide the Commission with ''the technological connectivity, which may include provision of hardware, software, and related technology and protocol support, to facilitate direct, read-only electronic access to transaction and account balance information.'' In the Template Letters, the parties further acknowledge and agree that the connectivity has either been provided (in the case of a new letter that covers existing accounts) or will be provided promptly following the opening of the account(s) (with respect to new accounts). However, the Commission is not requiring read-only electronic access for an FCM's DSRO, as proposed. The Commission was advised by the DSROs that they intend to rely on the NFA and CME automated daily segregation confirmation system.

The Commission does not anticipate that its staff would access FCM accounts on a regular basis to monitor account activity; rather, staff would make use of the read-only access only when necessary to obtain account balances and other information that staff could not obtain via the NFA and CME automated daily segregation confirmation system, or otherwise directly from the depositories, as discussed below. In this regard, the CME and NFA will provide the Commission on a daily basis with the account balances reported to them by each depository holding customer funds, under the CME and NFA's daily confirmation process. In addition, as discussed in section N below, each FCM that completes a daily Segregation Schedule, Secured Amount Schedule, and/or Cleared Swaps Segregation Schedule will be required to file such schedules with the Commission on a daily basis. The Commission anticipates that the combination of receipt of daily account balances reported by depositories and the Commission's ability to confirm account balances and transactions directly with depositories will diminish the need to rely upon direct electronic access to account information at depositories.

With respect to depositories holding customer funds in accounts maintained by a DCO, the Commission has decided not to adopt the electronic access requirement. Given that DCOs hold omnibus customer accounts that are not subdivided by clearing member or individual customer, read-only access to a DCO's customer account would not provide the kind of information that would identify inaccuracies in FCM reporting. Accordingly, proposed § 1.20(g)(4)(iii), which would require a DCO to deposit futures customer funds only with a depository that provides read-only access to the Commission, is not being adopted, and the remaining subparagraphs of § 1.20(g)(4) are renumbered accordingly.

The Commission also is adopting §§ 1.20(d)(6), 1.20(g)(4)(iv), and 30.7(d)(6), which require an FCM or DCO to deposit customer funds only with a depository that agrees to reply promptly and directly to any request from the director of the Division of Swap Dealer and Intermediary Oversight, the director of the Division of Clearing and Risk, or any successor divisions, or such directors' designees,[226] (or, in the case of an FCM, an appropriate officer, agent or employee of the FCM's DSRO), for confirmation of account balances or provision of any other information regarding or related to an account, without further notice to or consent from the FCM or DCO.[227] For DCOs, the Commission believes that this ability, in addition to the daily reporting of various accounts by customer origin pursuant to § 39.19(c)(1), will enable it to verify DCO account balances with a depository as necessary.

[218] FCStone Comment Letter at 5 (Feb. 15, 2013).

[219] Depository Bank Group Comment Letter at 13 (Feb. 15, 2013).

[220] NYPC Comment Letter at 2 (Feb. 15, 2013).

[221] Schwartz & Ballen Comment Letter at 4 (Feb. 15, 2013).

[222] LCH.Clearnet Comment Letter at 3 (Jan. 25, 2013).

[223] NFA Comment Letter at 6 (Feb. 15, 2013).

[224] *Id.*

[225] *Id.* at 7.

[226] Proposed §§ 1.20(d)(5) and (g)(4)(v) and 30.7(d)(5) would require the depository to reply promptly and directly to ''the Commission's'' requests, and the authority to make such requests was delegated to the director of the Division of Swap Dealer and Intermediary Oversight and the director of the Division of Clearing and Risk under proposed § 140.91(a)(7) and (11). The proposed Template Letters would require the depository to agree ''to respond promptly and directly to requests for confirmation of account balances and other account information from an appropriate officer, agent, or employee of the CFTC'' and ''immediately upon instruction by the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees . . . provide any and all information regarding or related to the Funds or the Accounts as shall be specified in such instruction and as directed in such instruction.'' The Commission is revising the rule text and the Template Letters so that all such requests will come from the director of the Division of Swap Dealer and Intermediary Oversight or the director of the Division of Clearing and Risk, or any successor divisions, or such directors' designees.

[227] To assist a depository in verifying authority and authenticating identity in connection with a request for information or electronic access, the Commission intends to post on its Web site an up-to-date list of names (including title and contact information) of the directors of the Division of Swap Dealer and Intermediary Oversight and the Division of Clearing and Risk, or any successor divisions, and the directors' designees, if any, for the relevant purpose.

g. Requirement To File New Acknowledgment Letters

Proposed paragraphs (d)(7) and (g)(4)(vii) of § 1.20 and proposed § 30.7(d)(7) would require FCMs and DCOs to file amended acknowledgment letters with the Commission upon a change to a depository's name or other information specified in the regulation. The Commission received three comments on this requirement. Schwartz & Ballen recommended that the Commission remove this requirement from the Template Letters and instead include ''binding effect'' language to ensure that the counterparties remain subject to the terms of the acknowledgment letter even if a party's name has changed.[228] LCH.Clearnet recommended a six-month timeframe after the publication of these rules by which DCOs and FCMs must obtain acknowledgment letters.[229] NYPC commented that the proposed requirements impose ''an onerous periodic validation process with depositories'' and, given this, it suggested that depositories provide written notice to a DCO of a name or address change no later than 30 days after any such change in order to permit a DCO to execute a new Template Letter.[230]

The Commission believes that acknowledgment letters should be as current and up-to-date as possible in order to maintain the clear legal status of the customer account, which will better protect customers in the event of an FCM failure. Accordingly, the Commission is adopting (renumbered) §§ 1.20(d)(8) and (g)(4)(vi) and 30.7(d)(8) as proposed, except that instead of providing for an ''amended'' letter, the regulation requires that a ''new'' letter be executed. The purpose of this technical change is to avoid problems in locating the accounts covered by a single letter that has been amended multiple times to reflect various changes. The Commission expects that a depository would notify account holders of a name change as a matter of practice and does not believe that it is too burdensome to expect a DCO or FCM to be aware of such changes. Any new acknowledgment letter reflecting a change enumerated in the regulation must be executed within 120 days of such changes, and then filed with the Commission within three business days of executing the new letter.

The Commission also is adopting (renumbered) §§ 1.20(d)(7) and (g)(4)(v) and 30.7(d)(7), which require an FCM or DCO to submit a copy of the acknowledgment letter to the Commission within three business days of the opening of an account or obtaining a new acknowledgment letter for an existing account; and §§ 1.20(d)(4) and (g)(4)(iii) and 30.7(d)(4), which require an FCM or DCO to deposit customer funds only with a depository that agrees to provide a copy of the acknowledgment letter to the Commission (and, in the case of an FCM, the FCM's DSRO) within the same time frame.[231] The Commission is, however, giving FCMs, DCOs, and depositories 180 days from the effective date of the final rules to replace existing acknowledgment letters with new ones that conform to the Template Letters.

As an additional matter, the Commission advises that it expects an FCM or DCO to follow customary authorization verification and signature authentication policies and procedures to ensure that an acknowledgment letter is executed by an individual authorized to bind the depository to the terms of the letter, and that the signature that appears on the letter is authentic. For example, an FCM or DCO may request from the depository a list of authorized signatories, a duly executed power of attorney, or other such documentation.

h. Standard of Liability

The proposed Template Letters would provide that a depository ''may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that [the depository has] no notice of or actual knowledge of, or could not reasonably know of, a violation of the Act or other provision of law by [the FCM or DCO]; and [the depository] shall not in any manner not expressly agreed to [in the letter] be responsible for ensuring compliance by [the FCM or DCO] with the provisions of the Act and CFTC regulations.''

The Depository Bank Group commented that this ''standard of liability'' provision would impose a burden beyond that currently expected of depository institutions.[232] In this regard, the Depository Bank Group asserted that the phrase ''violation of the Act or other provision of law'' encompasses much more than section 4d of the Act and would effectively require that the depository monitor and ensure the FCM's or DCO's compliance with *all* other laws, even those unrelated to the deposit of customer funds.[233] The Depository Bank Group further contended that the proposed standard, ''could not reasonably know of a violation'' would likely be read to require depositories to ''perform some undefined level of diligence'' which would be highly problematic.[234] The Depository Bank Group also stated that this requirement would likely delay transfers or withdrawals, and result in depositories passing on related costs to FCMs and DCOs and, in turn, to their clients, although the Depository Bank Group did not quantify the costs.[235] FIA similarly expressed concern that the requirement could cause delays and increased costs, again, without providing specific details and quantifying costs.[236]

Schwartz & Ballen asserted that banks have no ability to determine what uses an FCM is making of funds it withdraws from the account.[237] As noted above, the Federal Reserve Banks, which may act as depositories for Designated FMUs, commented that the ''actual knowledge'' standard, which typically imputes knowledge to a legal person as a whole, is not feasible for them because of the Board policy to not share supervisory information with Federal Reserve Bank personnel performing financial services.

In response to concerns expressed by commenters, the Commission clarifies that it does not intend to use the Template Letters as means to expand the scope of a depository's liability to FCM or DCO account holders, or to alter the responsibility that an FCM or DCO bears for its own compliance with the customer funds segregation requirements under the Act and Commission regulations. The use of standardized acknowledgment letters is intended to promote a uniform understanding among FCMs, DCOs, and depositories as to their obligations under the Act and Commission regulations with respect to the proper treatment of customer funds. In light of the public comments, the Commission is revising the language in the Template

[228] Schwartz & Ballen Comment Letter at 7 (Feb. 15, 2013).

[229] LCH.Clearnet Comment Letter at 4 (Jan. 25, 2013).

[230] NYPC Comment Letter at 4 (Feb. 15, 2013).

[231] The acknowledgment letter must be executed upon the opening of the account, regardless of when customer funds are deposited in the account.

[232] Depository Bank Group Comment Letter at 3 (Feb. 15, 2013). *See also* RJ O'Brien Comment Letter at 11 (Feb. 15, 2013).

[233] Depository Bank Group Comment Letter at 5 (Feb. 15, 2013). *See also* Katten-FIA Comment Letter at 2 (Aug. 2, 2013); Schwartz & Ballen Comment Letter at 6 (Feb. 15, 2013); and CME Comment Letter at 7 (Feb. 15, 2013).

[234] Depository Bank Group Comment Letter at 3 (Feb. 15, 2013).

[235] *Id.* at 5.

[236] FIA Comment Letter at 40 (Feb. 15, 2013).

[237] Schwartz & Ballen Comment Letter at 6 (Feb. 15, 2013).

Letters to more precisely articulate the intended scope of the depository's responsibility.

The provision, as adopted, reads as follows: ''You [the depository] may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to [in the letter] be responsible to us [the FCM or DCO] for ensuring compliance by us with the provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.'' Changes from the proposed language are discussed below.

The Depository Bank Group recommended inserting the phrase ''in the ordinary course of your business as a depository,'' and the Commission has accepted this recommendation to clarify the context in which the presumption of the FCM's or DCO's compliance is effective. As proposed, the presumption would be effective so long as the depository has ''no notice of or actual knowledge of, or could not reasonably know of, a violation.'' Given the concerns expressed by commenters as to the implications of the ''reasonably know'' standard, the Commission has determined to eliminate that clause in the final Template Letters.

In considering the various circumstances in which the conclusive presumptions would no longer be effective, the Commission has determined that the proposed reference to notice or actual knowledge of a ''violation,'' does not adequately capture all of the relevant circumstances. This is because the depository might receive information that calls into question the conduct of the FCM or DCO account holder, but it might not be apparent whether or not the activity rises to the level of being an actual violation of the law. Indeed, some actions will not be deemed to be ''violations'' until a judicial decision is rendered. As a result, the Commission has revised the language to refer to a ''potential violation'' so as not to inadvertently exclude circumstances which would warrant further inquiry by a depository.

The Commission agrees that the broad reference to ''the Act and CFTC regulations'' should be narrowed with respect to the description of the potential violation. Therefore, the Commission is adopting the Depository Bank Group's suggestions that the reference to the violation specify that it is limited to ''any provision of the Act or the CFTC regulations that relates to the segregation of customer funds.'' The Commission has made a similar change in the 30.7 Template Letters, referring to ''any provision of the Act or Part 30 of the CFTC regulations that relates to the holding of customer funds.'' This more precisely identifies the legal requirements that are the subject of the parties' obligations and the acknowledgment letter as a whole.

As an additional matter, the Commission has added to the standard of liability provision the following proviso: ''however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.'' This statement affirms the depository's understanding that its statutory and regulatory obligations with respect to the customer funds on deposit are not limited by the presumption upon which it relies in its dealings with FCM or DCO account holders.

The Commission notes that a depository's obligation to comply with the segregation requirements under section 4d of the Act is explicitly imposed upon depositories by section 4d(b) of the Act,[238] and legal precedent has established a standard of liability to which the Commission holds depositories and which is not dependent upon affirmation in the Template Letters. The Commission reaffirms its long-held position that the depository will be held liable for the improper transfers of customer funds by an FCM or DCO if it knew or should have known that the transfer was improper.[239]

The Commission recognizes that a depository's treatment of customer funds may be limited in particular circumstances on the basis of what it knows or reasonably should know of a violation of the Act that would preclude it from obtaining rights to such funds superior to those of one or more customers of the defaulting FCM.[240] Such a violation could occur, for example, in circumstances in which the depository received particular margin funds with actual knowledge, or in circumstances in which it is reasonable to conclude that the depository should have known, that the depositing FCM or DCO has breached its duty under section 4d. The depository's participation in such use of customer funds could subject it to liability for violating section 4d or aiding and abetting a violation of the Act under section 13(a) of the Act (7 U.S.C. 13c).[241]

The Commission emphasizes that while the depository has no affirmative obligation to police or monitor an FCM or DCO account holder's compliance with the Act or Commission regulations, the depository *cannot* ignore signs of wrongdoing. Should a depository know or suspect that funds held in a customer account have been improperly withdrawn or otherwise improperly used in violation of section 4d of the Act or the Commission's regulations related to segregation of customer funds, the Commission expects the depository to immediately report its concern to the Division of Swap Dealer and Intermediary Oversight, the Division of Clearing and Risk, the Division of Enforcement, or the Commission's Whistleblower Office.[242]

i. Liens

The proposed Template Letters would include the following language: ''Furthermore, [the depository]

[238] Section 4d(b) of the Act explicitly provides that it is unlawful for any clearing agency of a contract market and any depository that has received customer funds to hold, dispose of, or use any such funds as belonging to the depositing FCM or any person other than the customers of such FCM. *See also* section 4d(f)(6) of the Act (applying the same requirement to Cleared Swaps Customer Collateral).

[239] *See, e.g.,* CFTC Interpretative Ltr. No. 79–1, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶20,835 (May 29, 1979) at page 2. As long ago as 1979, the Commission found that ''if a bank, with prior notice, permits or acquiesces in the withdraw [sic] or use of customers' funds by a futures commission merchant for an unlawful purpose, the bank would violate or be aiding and abetting a violation of the Act.''

[240] *See* CFTC Interpretative Ltr. No. 86–9, [1986–1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,015 (April 21, 1986) (limiting a bank's treatment of customer margin funds ''in particular circumstances by reason of what it knows or reasonably should know of a violation of the Act or other provision of law that would preclude it from obtaining rights to such funds superior to those of one or more customers of the defaulting FCM.'').

[241] *Id. See also* CFTC Interpretative Statement. No. 85–3 [1984–1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶22,703 (Aug. 12, 1985). A DCO's rights with respect to the use of customer margin funds may be limited in particular circumstances by reason of the clearing organization's knowledge of or participation in a violation of the Act or other provision of law that precludes it from obtaining rights to such funds superior to those of one or more customers of the defaulting clearing member. The letter provides that a DCO could be subject to aiding and abetting liability under section 13(a) of the Act if the DCO knowingly participates in a violation of the Act.

[242] *See* CFTC Interpretative Ltr. No. 79–1 (stating ''if a bank subsequently becomes aware of an unauthorized withdrawal or use of customers' funds by an FCM, we would expect the bank to notify the Commission immediately'').

acknowledge[s] and agree[s] that such Funds may not be used by [the depository] or by [the FCM or DCO] to secure or guarantee any obligations that [the FCM or DCO] might owe to [the depository], nor may they be used by [the FCM or DCO] to secure credit from [the depository]. [The depository] further acknowledge[s] and agree[s] that the Funds in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities [the FCM or DCO] may now or in the future have owing to [the depository]. This prohibition does not affect [the depository's] right to recover funds advanced in the form of cash transfers [the depository] make[s] in lieu of liquidating non-cash assets held in the Account(s) for purposes of variation settlement or posting initial (original) margin.'' This language is consistent with section 4d(b) of the Act, which states: ''It shall be unlawful for any person, including but not limited to . . . any depository, that has received any money, securities, or property for deposit in a separate account as provided in [section 4d(a)(2) of the Act], to hold, dispose of, or use any such money, securities, or property as belonging to the depositing [FCM] or any person other than the customers of such [FCM].''

Schwartz & Ballen asserted that because many FCMs hold only cash assets in the accounts, the language in the letter should be expanded to permit banks to recover funds they advance that result in overdrafts in the accounts.[243] Schwartz & Ballen further stated that the failure to permit banks to recover such advances whether or not there are non-cash assets in the account will likely lead to banks incurring losses.[244] FCStone elaborated on this issue, explaining that a customer receives a margin call through an account statement, which is transmitted overnight, and the customer wires funds the following day.[245] The DCO, however, automatically drafts the funds from the FCM's account at 9:00 a.m. on the basis of a depository's intraday daylight overdraft.[246] Without granting a depository a lien on customer funds, FCStone stated that an FCM would be required to ''front'' all funds for customers until the customer has wired funds to the FCM.[247] FCStone contended that a change of this sort could ''threaten the continued operations of small to mid-sized FCMs not affiliated with banks'' and cause a substantial liquidity strain.[248] The Depository Bank Group additionally warned that a depository may not be willing to provide intraday advances to the customer segregated account without the right to take a lien on the account or the right to set off between multiple customer segregated accounts and would, therefore, not be in a position to provide liquidity.[249] As a result, an FCM or DCO would likely need to maintain a buffer of its own funds in the segregated customer accounts to fully pre-fund transactions related to such accounts.[250] The Depository Bank Group contended that the impact on small- to mid-sized FCMs would be that of a lesser ability to enter into ''everyday transactions'' for the customer segregated account, which could result in exclusion from the industry.[251] The Depository Bank Group cited as support a comment letter that staff of the Federal Reserve Bank of Chicago submitted in 2010.[252]

The Commission recognizes that a depository may not want to provide unsecured overdraft coverage. However, a depository taking a lien on a customer account to facilitate intraday payments presents a serious problem if an FCM's customer does not satisfy a margin call and the FCM, in turn, cannot cover the call and becomes insolvent before the depository can be repaid.

The Commission interprets the requirements of section 4d of the Act to prohibit a lien on customer funds to satisfy an intraday extension of credit to an FCM to meet margin requirements at a DCO. As an alternative to taking a lien on the customer account, the depository could take a lien on a proprietary account held by the FCM at the depository, or the FCM could add its own funds to the segregated account or collect more margin from its customers in order to provide a more substantial financial cushion. It is not the Commission's intention to disadvantage mid-size and smaller FCMs in applying this standard across all FCMs, regardless of size.

The Commission notes that no commenter has proffered information or data that would indicate intraday advances are a commonplace, routine occurrence. Indeed, it may be cause for concern if a large number of FCMs cannot meet intraday margin calls for customer accounts on a regular basis.

Without expressing a view of the Commission's position concerning section 4d of the Act, FIA recommended expanding the circumstances in which a depository could impose a lien with respect to customer funds.[253] FIA recommended revising the language to read: ''You further acknowledge and agree that the Funds in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you except to recover from the Account(s) (or from any other CFTC Regulation 1.20 Customer Segregated Account(s) we have with you), Funds you may advance from time to time to facilitate transactions by or on behalf of, or on account of, or otherwise for the benefit of, the Account(s) or our customers whose Funds are held in the Account(s).'' [254] The Commission confirms that a depository can possess a lien across multiple accounts of the same FCM as long as the accounts are of the same account class (*i.e.,* 4d(a) cash and custodial accounts). However, the Commission believes FIA's suggested modification is overbroad and has the potential to be interpreted to permit a depository's imposition of a lien in a greater number of circumstances than section 4d of the Act allows.

NYPC urged the Commission to clarify that DCOs have the right to transform non-cash customer funds into cash to satisfy liquidity needs related to the customer account of a defaulting FCM clearing member not only through the sale of such assets, but also through the use of liquidity arrangements, such as lines of credit and repurchase agreements.[255] NYPC recommended that the Commission modify the last sentence in the ''lien'' paragraph as follows: ''The prohibitions contained in this paragraph do not affect your right to recover funds advanced by you in the form of cash transfers, lines of credit, repurchase agreements or other similar liquidity arrangements in lieu of the liquidation of non-cash assets held in the Account(s) for purposes of variation settlement or posting initial (original) margin with respect to the Account(s).'' The Commission recognizes that liquidity arrangements are an important aspect of a DCO's default management plan and agrees that the use of lines of

[243] Schwartz & Ballen Comment Letter at 6–7 (Feb. 15, 2013).

[244] *Id.*

[245] FCStone Comment Letter at 4.

[246] *Id.*

[247] *Id.* at 5.

[248] *Id.*

[249] Depository Bank Group Comment Letter at 7 (Feb. 15, 2013).

[250] *Id.*

[251] *Id.*

[252] Comment letter from David A. Marshall, Federal Reserve Bank of Chicago, dated September 8, 2010.

[253] Katten-FIA Comment Letter at 2 (Aug. 2, 2013).

[254] *Id.*

[255] NYPC Comment Letter at 3 (Feb. 15, 2013).

credit or repurchase agreements are acceptable alternatives to the liquidation of non-cash assets held in a customer account. As a result, the Commission has determined to modify the sentence in a manner similar to that recommended by NYPC.

In response to the other comments, the Commission notes that it has always interpreted and applied section 4d of the Act in a manner consistent with the language in the proposed Template Letters. With respect to a depository's right of setoff against a customer account, the Commission has long recognized only one very limited circumstance. CFTC Interpretative Letter No. 86–9 allows, with certain limitations,[256] a bank's right of setoff against a customer cash account that does not have sufficient available balances to meet a margin call, where there exists an affiliated custodial account that contains securities purchased with funds from the customer cash account.[257] In this case, there is no extension of credit because the accounts, when aggregated, have enough assets to support the cash advance.

The Depository Bank Group raised a question about similar circumstances in which a depository might set off amounts owed to a customer segregated account holding U.S. dollars, with amounts held in foreign currency in another customer segregated account.[258] To the extent that a depository advances cash in lieu of exchanging foreign currency held in a related 4d account, the same rationale that serves as the basis for CFTC Interpretative Letter No. 86–9 would apply, *i.e.,* the advancement of funds does not represent an extension of credit secured by customer funds. The Commission confirms that a depository holding customer funds in one segregated account may set off amounts withdrawn from another account in cases where the depository advances funds in lieu of converting cash in one currency to cash in a different currency.

The Template Letters provide for a depository's right of setoff against the customer account consistent with Interpretative Letter No. 86–9. The Commission believes that expanding the scope of a depository's right of setoff to support extensions of credit to an FCM would violate the requirements of section 4d of the Act and notes that none of the commenters provided a legal analysis that would refute this position.

The Commission recognizes, however, that there may be situations similar to those specifically enumerated in the proposed Template Letters for which an advancement of cash and the related imposition of a lien in lieu of liquidating non-cash assets or converting cash in one currency to cash in a different currency may be permissible. To accommodate this, the Commission is revising the language to remove the concluding clause, ''for the purposes of variation settlement or posting initial (original) margin.'' This change preserves the intended meaning and purpose of the provision without unintentionally limiting its application in other similar circumstances.

Accordingly, the Commission is adopting the proposed ''lien'' language of the Template Letters, modified to include a reference to the depository's right to recover funds related to certain liquidity arrangements and to eliminate specific examples of circumstances in which imposition of a lien would be permissible. FCMs, DCOs, and depositories are reminded that any permissible advancement of cash and related imposition of a lien on a customer account must be properly documented and recorded in compliance with all applicable recordkeeping requirements.

j. Examination of Accounts

As proposed, the Template Letters for both FCMs and DCOs would require a depository to agree that accounts holding customer segregated funds could be ''examined at any reasonable time'' by the Commission or, as applicable, an FCM's DSRO, and they further provide that the acknowledgment letter ''constitutes the authorization and direction of the undersigned to permit any such examination or audit to take place.'' Schwartz & Ballen commented that the provision should also provide for the Commission or DSRO to give the depository advance notice before being permitted to examine FCM accounts.[259] The Commission is not including this recommended precondition because an examination of this type is likely to be conducted only in response to exigent circumstances and the ''reasonable time'' provision is sufficient evidence of the Commission's intent to proceed in a commercially reasonable manner under the particular circumstances.

The Commission is retaining the examination provision in the FCM Template Letters but is not including it in the DCO Template Letters. Consistent with the Commission's determination regarding electronic access to DCO account information, the Commission believes that authorization to examine a DCO's customer segregated account at a depository is not necessary because of the Commission's ability to obtain account information directly from the depository upon request, and directly from the DCO through daily reporting under § 39.19(c)(1).

As a technical matter, the Commission is eliminating use of the term ''audit'' to clarify that the examination will be targeted and is not intended to be an audit, as that term is used in the field of accounting.

5. Prohibition against Commingling Customer Funds

The Commission proposed to amend § 1.20(e) to explicitly address the commingling of customer funds. Proposed § 1.20(e)(1) provides that an FCM may, for convenience, commingle the funds that it receives from, or on behalf of, multiple futures customers in a single account or multiple accounts with one or more of the permitted depositories set forth in § 1.20(b).

Proposed § 1.20(e)(2) prohibits an FCM from commingling futures customers funds with any proprietary funds of the FCM, or with any proprietary account of the FCM. Proposed § 1.20(e)(2), however, provides that the prohibition on the commingling of futures customer funds and the FCM's proprietary funds does not prohibit an FCM from depositing proprietary funds into segregated accounts in accordance with proposed § 1.23 as a buffer to prevent the firm from becoming undersegregated due to normal business activities, such as daily margin payments by the FCM to a DCO.

Proposed § 1.20(e)(3) further prohibits an FCM from commingling futures customer funds with funds deposited by 30.7 customers for trading foreign futures or foreign option positions in accordance with part 30 of the Commission's regulations, or with Cleared Swaps Customer Collateral deposited by Cleared Swaps Customers for Cleared Swaps under part 22 of the Commission's regulations. Proposed § 1.20(e)(3) permits, however, the commingling of futures customer funds with 30.7 customer funds and/or Cleared Swaps Customer funds if expressly permitted by a Commission

[256] *See* CFTC Interpretative Ltr. No. 86–9, [1986–1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,015 (April 21, 1986) (limiting a bank's treatment of customer margin funds ''in particular circumstances by reason of what it knows or reasonably should know of a violation of the Act or other provision of law that would preclude it from obtaining rights to such funds superior to those of one or more customers of the defaulting FCM.'').

[257] *Id.*

[258] *Id.* at 8.

[259] Schwartz & Ballen Comment Letter at 7 (Feb. 15, 2013).

regulation or order, or by a DCO rule approved in accordance with § 39.15(b)(2) of the regulations.[260]

Similarly, a proposed amendment to § 30.7 would prohibit an FCM from commingling funds required to be deposited in a foreign futures and foreign options secured amount account with funds required to be deposited in a customer segregated account or cleared swaps customer account.[261]

The Commission received one comment on the proposed amendments to § 1.20(e). FIA stated that it fully supported the proposed amendments, which implement the segregation provisions of section 4d(a) and 4d(f) of the Act.[262]

FIA further requested that the Commission confirm that the proposed amendments would not prohibit a customer that engages in futures transactions on a designated contract market, foreign futures or options transactions on foreign boards of trade, and Cleared Swaps through a single FCM, from meeting its margin obligations for the three different segregation accounts by making a single payment to the FCM.[263] FIA states that such practice is common in the industry today, reduces the FCM's credit risk, is operationally more efficient for both the FCM and its customers, and indirectly reduces customer settlement risk.[264]

The Commission confirms, subject to the following conditions, that a receipt of funds from a customer that wishes to meet its multiple margin obligations by making a single deposit payment to the FCM is not prohibited by § 1.20. The FCM, however, must initially receive the customer's funds into the customer's section 4d(a)(2) segregation account. The funds may not be directly deposited into the customer's § 30.7 secured account or Cleared Swaps Segregation Account, as such accounts may present different risks than the section 4d(a)(2) account, and the Commission would like to standardize operationally the practice of how customer funds are received by FCMs by authorizing one approach that would be applicable to all customers to minimize the possibility of transactional errors.

In addition, the FCM must simultaneously record the book entry credit to the customer's § 30.7 secured account and the customer's Cleared Swaps Account (as applicable) as directed by the customer upon the receipt and recording of the cash into the customer's 4d(a)(2) segregation account. Also, the FCM must ensure at the time the book entry credit is made to the customer's account, that the credit does not result in the FCM having obligations to 30.7 customers or Cleared Swaps Customers that are in excess of the total assets held in such accounts for such customers. Failure of the FCM to hold a sufficient amount of excess funds in the 30.7 customer accounts and Cleared Swaps Customer Accounts at any time to meet its obligations to such customers would be a violation of the Act and the Commission's regulations.

Furthermore, if the FCM permits customers to use one wire transfer to fund more than one account class, the FCM's policy and procedures for assessing the appropriate amount of targeted residual interest required under § 1.11 must take this practice into consideration and should include appropriate adjustments and estimates to reflect this practice. Finally, the Commission hereby clarifies that all prior guidance concerning the receipt of customer deposits at branch locations or otherwise deposited into the FCM's proprietary accounts, regardless of excess funds held in segregation, is repealed and withdrawn and such practice is not permitted under § 1.20 as adopted.[265]

The Commission adopts the amendment as proposed.

6. Limitations on the Use of Customer Funds

Proposed § 1.20(f) requires FCMs to treat and deal with the funds of a futures customer as belonging to such futures customer. In addition, the Commission proposed to prohibit an FCM from using, or permitting the use of, the funds of futures customer for any person other than for futures customers, subject to certain limited exceptions. Proposed § 1.20(f) also states that an FCM may obligate futures customers' funds to a DCO or another FCM solely to purchase, margin, or guarantee futures and options positions of futures customers, and that no person, including any DCO or any depository, that has received futures customer funds for deposit in a segregated account, may hold, dispose of, or use any such funds as belonging to any person other than the futures customers of the FCM that deposited such funds.

The Commission did not receive any comments regarding proposed § 1.20(f). However, as discussed above, the FIA stated that it agrees that FCMs are required to comply with the segregation provisions of the Act at all times, and expressed general support for the Commissions efforts to implement the Act's segregation provision.[266] The Commission notes that the language in proposed § 1.20(f) largely mirrors the language set forth in current § 1.20, which language was, and continues to be, intended to further implement the segregation provisions of the Act.[267] Thus, the Commission is adopting the provision as proposed.

7. Segregation Requirements for DCOs

Proposed § 1.20(g) provides segregation requirements applicable to DCOs, as opposed to FCMs. Proposed paragraph (g)(2) lists the permitted depositories for futures funds received by a DCO as any bank or trust company, and clarifies that the term ''bank'' includes a Federal Reserve Bank. The necessity for this proposed amendment is highlighted by section 806(a) of the Dodd-Frank Act, which provides that a Federal Reserve Bank may establish and maintain a deposit account for a ''financial market utility'' (in the present case, a DCO) that has been designated as systemically important by the Financial Stability Oversight Council. Proposed paragraph (g)(3) requires DCOs to comply with the provisions of § 1.49 with respect to holding segregated funds outside the U.S. Regulation 1.20(g)(5) prohibits a DCO from commingling futures customer funds with the DCO's proprietary funds or with any proprietary account of any of its clearing members, and prohibits the DCO from commingling funds held for futures customers with funds deposited by clearing members on behalf of their

[260] Regulation 22.2(c)(2) regarding cleared swaps customer accounts already prohibits commingling.

[261] Proposed § 30.7(e)(3).

[262] FIA Comment Letter at 36 (Feb. 15, 2013).

[263] *Id.*

[264] *Id.*

[265] Previous guidance permitted a branch office of an FCM to deposit customer funds into an unsegregated bank account if the main office of the FCM on the same day deposited the same amount of its funds into a segregated bank account, and kept records fully explaining the transactions. *See* Commodity Exchange Authority Administrative Determination No. 203 (December 1, 1966). *See also* CFTC Interpretative Letter No. 90–7 (Secured Amount Account for Foreign Futures and Options, May 1, 1990). This practice is now prohibited.

[266] FIA Comment Letter at 2 (June 20, 2013). *See also* section II.G.1. above for a further discussion of an FCM's obligation to be in compliance with its segregation obligation at all times.

[267] Accordingly, relevant prior Commission orders and guidance will continue to apply to § 1.20(f). For example, in *In re JPMorgan Chase Bank* CFTC 12–17 (April 4, 2012), the Commission simultaneously initiated and settled an action against a depository for violating § 1.20(a) and (c) because it unlawfully used customer funds as belonging to someone other than the customers of an FCM. Specifically, the Commission found that a depository's intra-day extension of credit to an FCM (Lehman Brothers) based upon customer funds the FCM had deposited with a bank (JPMorgan Chase) violated § 1.20(a) and (c). Regulation 1.20(f) would continue to prohibit such use of customer funds, as well as any other type of disposal, holding or use the Commission has previously identified as unlawful.

Cleared Swaps Customers. DCOs would be permitted to commingle the funds of multiple futures customers in a single account or accounts for operational convenience. The Commission adopts the amendment as proposed.

8. Immediate Availability of Bank and Trust Company Deposits

The Commission proposed a paragraph (h) to § 1.20 to require that all futures customer funds deposited with a bank or trust company must be deposited in accounts that do not impose any restrictions on the ability of the FCM or DCO to withdraw such funds upon demand. An FCM or DCO may not deposit customer funds in any account with a bank or trust company that does not, by the terms of the account or operation of banking law, provide for the immediate availability of such deposits upon the demand of the FCM or DCO.

Paragraph (h) codifies a long-standing interpretation of the Commission's Division of Swap Dealer and Intermediary Oversight and predecessor divisions derived from an Administration Determination by the Commission's predecessor, the Commodity Exchange Authority of the U.S. Department of Agriculture.[268] The requirement, as proposed, is a practical necessity to the effective functioning of FCMs and futures markets. In this regard, customer funds deposited with a bank must be maintained in accounts that allow for the immediate availability of the funds in order for the FCM to be assured of meeting its obligation to make any necessary transfers of customer funds to a DCO or to return funds to customers upon their request. The Commission is adopting paragraph (h) as proposed.[269]

[268] *See* Administrative Determination No. 29 of the Commodity Exchange Authority dated Sept. 28, 1937 stating, ''the deposits, by a futures commission merchant, of customers' funds * * * under conditions whereby such funds would not be subject to withdrawal upon demand would be repugnant to the spirit and purposes of the Commodity Exchange Act. All funds deposited in a bank should in all cases be subject to withdrawal on demand.''

[269] CIEBA noted it is comment letter that industry groups are involved in various initiatives to provide customers with the option for full physical segregation of margin collateral, and requested confirmation that § 1.20(h) would not prohibit the use of a full segregation model if developed. *See* CIEBA Comment Letter at 4 (Feb. 20, 2013). The Commission encourages industry groups to continue to assess alternatives to the current segregation structure in an effort to provide greater protection of customer funds and to ensure the effective operation of the clearing and settlement functions. Regulation 1.20(h) is intended to prohibit situations where an FCM or DCO deposits customer funds into an account that by law or operation limits or potentially limits the FCM's or DCO's ability to withdraw the funds from the account for the use intended (*i.e.,* as performance bond). The Commission would consider any future amendments to § 1.20(h) based upon the developments of alternative segregation modes.

9. Segregated Funds Computation Requirement

The Commission proposed to add a new paragraph (i), which mirrored the requirements recently adopted in part 22 for Cleared Swaps Customers. Proposed paragraph (i) was designed to implement, with increased detail, the Net Liquidating Equity Method of calculating segregation requirements. A customer may have positive Net Liquidating Equity (*i.e.,* a credit balance) in his or her account, requiring segregation of his or her funds, but may have insufficient Net Liquidating Equity to cover the margin required for that customer's open positions.

Accordingly, the Commission proposed to require an FCM to record in the accounts of its futures customers the amount of margin required for each customers' open positions, and to calculate margin deficits (*i.e.,* undermargined amounts) for each of its customers. Moreover, the Commission proposed to require that an FCM maintain residual interest in segregated accounts in an amount that exceeds the sum of all futures customers' margin deficits (''the Proposed Residual Interest Requirement'').[270]

In addition, the Commission proposed an amendment to § 1.22.[271] Regulation 1.22 is a longstanding regulation[272] and currently provides that an FCM may not use the cash, securities or other property deposited by one futures customer to purchase, margin or settle the trades, contracts, or other positions of another futures customer, or to extend credit to any other person.[273] This ''requirement is designed not only to prevent disparate treatment of customers by an FCM, but also to insure that there will be sufficient money in segregation to pay all customer claims if the FCM becomes insolvent.'' [274] Regulation 1.22 further provides that an FCM may not use the funds deposited by a futures customer to carry trades or positions, unless the trades or positions are traded through a DCM.[275]

The Commission proposed an amendment to § 1.22 to clarify that it is not permissible for an FCM to be undersegregated at any point in time during the day. As stated in the Proposal, section 4d(a)(2) expressly requires an FCM to segregate futures customers' funds from its own funds, and prohibits an FCM from using the funds of one customer to margin or extend credit to any other futures customer or person.[276] Moreover, to review compliance with these proposed requirements, the Commission proposed that the sum of all margin deficits (*i.e.,* undermargined amounts) be reported on the Segregation Schedule (as discussed previously in section II.A. with respect to amendments to § 1.10) and on the daily segregation calculation.[277]

The Commission requested comment on all aspects of the Proposed Residual Interest Requirement, including the costs and benefits of this proposed regulation.[278]

[270] *See* discussion in note 30 above. Therefore, under the Proposed Residual Interest Requirement an FCM would have to maintain at all times in segregated account a sufficient amount of funds to cover the Net Liquidating Equities of each customer and a sufficient amount of residual interest to cover the undermargined amounts of each customer.

[271] 77 FR 67886.

[272] *See, e.g.,* 13 FR, 7820, 7837 (Dec. 18, 1948).

[273] 17 CFR 1.22.

[274] 46 FR 11668, 11669 (Feb. 10, 1981).

[275] 17 CFR 1.22.

[276] 77 FR 67886.

[277] *Id.*

[278] *See* 77 FR 67882, 67916. The Commission also specifically requested comments on the following: Whether the Proposed Residual Interest Requirement would serve to increase the protections to customer funds in the event of an FCM bankruptcy? To what extent would the Proposed Residual Interest Requirement increase costs to FCMs and/or futures customers? To what extent would the Proposed Residual Interest Requirement benefit futures customers and/or FCMs? To what extent would the Proposed Residual Interest Requirement increase or mitigated market risk? To what extent would the Proposed Residual Interest Requirement lead to FCMs requiring customers to provide margin for their trades before placing them? To what extent is the Proposed Residual Interest Requirement likely to lead to a re-allocation of costs from customers with excess margin to undermargined customers? For purposes of margin deficit calculations, whether the Commission should address issues surrounding the timing of when an FCM must have sufficient funds in the futures customer account to cover all margin deficits? If so, how should the Commission address such issues? *See* 77 FR at 67882.

With regards to the costs and benefits, the Commission asked the following questions: Whether FCMs typically maintain residual interest in their customer segregated account that is greater than the sum of their customer margin deficits, and data from which the Commission may quantify the average difference between the amount of residual interest an FCM maintains in customer segregated accounts and the sum of customer margin deficit. How much additional residual interest would FCMs need to hold in their customer segregated accounts in order to comply with the Proposed Residual Interest Requirement? What is the opportunity cost to FCMs associated with increasing the amount of capital FCMs place in residual interest, and data that would allow the Commission to replicate and verify the calculated estimates provided. Information regarding the additional amount of capital that FCMs would likely maintain in their customer segregated accounts, if any, to comply with the Proposed Residual Interest Requirement. What is the average cost of capital for an FCM? *See* 77 FR at 67916.

The Commission also specifically requested that commenters provide data and calculations that would allow the Commission to replicate and verify the cost of capital that commenters estimate. *See id.*

The Commission has received and has considered a wide variety of public comments regarding the Proposed Residual Interest Requirement, including comments from panelists made during public roundtables and written submissions from commenters.

Several commenters supported the Commission's Proposed Residual Interest Requirement. CIEBA stated that it strongly supported the Proposed Residual Interest Requirement, arguing that the proposed regulations are consistent with Congressional intent and the Commission's historical interpretations of the Act and sound economic and systemic risk policy. Highlighting section 4d(a)(2) of the Act and its directive that FCMs ''keep collateral and funds of each individual customer distinct from that of customers and the FCM,'' CIEBA argued that ''permitting FCMs to use customer funds to cover margin deficits of a different customer and thereby subsidize the FCM's obligations would'' contravene well established statutory policy.[279] In addition, CIEBA noted that the Dodd-Frank Act was adopted to increase regulatory protections for customers.[280] CIEBA also noted several benefits resulting from the Proposed Residual Interest Requirement, including the reduction of systemic risk, competitive benefits for those FCMs that do not use customer excess to meet the obligations of other clients, and the enhancement of customer protection in the event of an FCM bankruptcy.[281] ICI also stated that it supported the Proposed Residual Interest Requirement on the basis that it would provide additional protections to customer funds.[282] SIFMA asserted that it strongly supported the Proposed Residual Interest Requirement because it preserves the sanctity of each customer's margin account by maintaining segregation between customer margin accounts through the incorporation of appropriate safeguards to protect customer funds.[283] SIFMA stated that the proposal, ''in effect, shifts the costs and burdens of a margin shortfall from customers with excess margin to customers with deficits, where it properly belongs.'' [284] Paul/Weiss supported the Proposed Residual Interest Requirement ''[i]n principle.'' [285] Vanguard stated that it was ''particularly supportive'' of the Proposed Residual Interest Requirement.[286] Noting that while an FCM would either have to have its customers pre-fund margin requirements for pending trades or ''lend'' such customers margin ahead of a margin transfer, Vanguard argued that the ''proposed changes correctly shift the risk to customers in deficit and away from any excess margin transferred by other customers.'' [287] Vanguard also argued that, in its opinion, comments at the public roundtable that ''suggested same-day margin transfers were overly complicated to achieve and the accelerated capital charge would therefore impose significant added costs to an FCM and, by extension, to its customers,'' seem overstated particularly because same-day margin transfer is ''the norm in the OTC swap market.'' [288] In fact, Vanguard stated that ''same-day margin transfer is required in Vanguard's futures and options agreements, consistent with the long-standing market practice.'' [289] Vanguard encouraged the Commission to avoid weakening customer protection, ''at least a weakening beyond the need to maintain segregation on no less than a once-a-day basis, with the possibility for clearing house initiated intra-day calls (and corresponding segregation maintenance) as needed in periods of market stress.'' [290] CFA also supported the Proposed Residual Interest Requirement, asserting its belief ''that no futures customer should be under-segregated at any time during the day for any reason.'' [291]

A number of commenters opposed the Proposed Residual Interest Requirement on the basis that the requirement appeared wholly unrelated to the MFGI and PFGI bankruptcies,[292] with other commenters observing that the Proposed Residual Interest Requirement is unnecessary to achieve the regulatory goals, including assuring compliance with section 4d of the Act, in light of other Commission regulations.[293]

In addition, several commenters commented on the lack of feasibility of the proposal, interpreting the ''at all times'' language to require FCMs to continuously calculate the sum of their customers' margin deficits, and to continuously act on those calculations. For example, RCG stated that it would be virtually impossible for FCMs to satisfy the Proposed Residual Interest Requirement because an accurate assessment of aggregate customer margin deficiencies would be difficult given that (1) ''the underlying markets operate on a 24-hour basis and customer fund transfers occur repeatedly throughout each business day,'' and (2) ''omnibus account offsets are not provided to clearing FCMs until the end of the trading day or, in some instances, the next business day.'' [294] MGEX also argued that ''at all times'' requirement in the Proposed Residual Interest Requirement may be impracticable as it is a constantly moving target,[295] and TD Ameritrade argued that because the firm calculates margin calls after it receives its nightly downloads, ''it would be difficult, if not impossible, to assess customer margin deficiencies at any moment in time, because the markets have not closed and the margin requirements are not always known.'' [296] In addition, CME stated that there does not appear to be a system that currently exists or that could be constructed in the near future that will permit FCMs to accurately calculate customer margin deficiencies, at all times.[297] CMC asserted that the ''at all times'' portion of the Proposed Residual Interest Requirement would ''create liquidity issues and increase costs for FCMs and end users,'' possibly ''limit the number and type of transactions FCMs clear, the number of customers they service and the amount of financing they provide,'' and ''require executing FCMs to collect collateral for give-ups so that customer positions are fully margined in the event a trade is rejected by a clearing

[279] CIEBA Comment Letter at 2 (Feb. 20, 2013).

[280] *Id.*

[281] *Id.* at 3. On this point, CIEBA further noted that allowing an FCM to use customer excess to support other customer's positions could lead to improper or complex recordkeeping, which can, in turn, jeopardize the ability of a trustee to facilitate the return of customer funds and the porting of positions to a solvent FCM.

[282] ICI Comment Letter at 3 (Jan. 14, 2013). *See also* Franklin Comment Letter at 2 (Feb. 15, 2013) (writing in support of the positions taken in the ICI Comment Letter).

[283] SIFMA Comment Letter at 2 (Feb. 21, 2013).

[284] *Id.*

[285] Paul/Weiss Comment Letter at 3 (Feb. 15, 2013).

[286] Vanguard Comment Letter at 7 (Feb. 22, 2013).

[287] *Id.*

[288] *Id.*

[289] *Id.*

[290] *Id.* at 7–8.

[291] CFA Comment Letter at 5–6 (Feb. 13, 2013).

[292] *See, e.g.,* CHS Hedging Comment Letter at 1 (Feb. 15, 2013); NFA Comment Letter at 12 (Feb. 15, 2013); JSA Comment Letter at 2 (Feb. 15, 2013); Paragon Comment Letter at 1 (Feb. 15, 2013); NIBA Comment Letter at 2 (Feb. 15, 2013); ICA Comment Letter at 1 (Feb. 15, 2013).

[293] *See, e.g.,* FIA Comment Letter at 18–21 (Feb. 15, 2013). *See also* FIA Comment Letter at 2–5 (June 20, 2013).

[294] RCG Comment Letter at 3 (Feb. 12, 2013).

[295] *See* MGEX Comment Letter at 2 (Feb. 18, 2013). *See also* NPPC Comment Letter at 2 (Feb. 15, 2013) (stating that the ''at all times'' portion of the Proposed Residual Interest Requirement is ''burdensome'', and that changing margin procedures ''to anticipate future market movements, pre-fund margin calls, [or] make margin call deposits throughout the day based on current market movements is impractical.'').

[296] TD Ameritrade Comment Letter at 4–5 (Feb. 15, 2013).

[297] *See* CME Comment Letter at 5 (Feb. 15, 2013).

FCM,'' [298] which ''may force many end users to decrease or discontinue hedging and risk management practices.'' [299] Advantage opposed the Proposed Residual Interest Requirement asserting that it was ''extremely prejudicial to small and midsize firms and their customers.'' [300] Advantage also stated that the Proposed Residual Interest Requirement would result in FCMs more quickly liquidating customer positions during extreme market moves, which would make markets more volatile.[301] Advantage also maintained that calculations of margin for omnibus accounts cannot be determined prior to the receipt of offsets, which may not be obtained until late in the day, thereby adversely impacting an FCM's ability to assess customer margin deficiencies.[302]

FIA and LCH.Clearnet opposed the Proposed Residual Interest Requirement, and focused particularly on the ''at all times'' portion of the requirement.[303] FIA stated that the Proposed Residual Interest Requirement may force a number of small to mid-sized FCMs out of the market, which will decrease access to the futures markets and increase costs for IBs, hedgers, and small traders.[304] In addition, FIA argued that the Proposed Residual Interest Requirement would significantly impair the price discovery and risk management purposes of the market.[305] Moreover, FIA stated that the Proposed Residual Interest Requirement ''would impose a tremendous operational and financial burden on the industry, requiring the development and implementation of entirely new systems to assure compliance'' with the ''at all times'' portion of the requirement.[306] FIA also averred that the ''provisions of section 4d of the Act prohibiting an FCM from using the fund of one customer 'to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held,' has been the lynchpin of customer funds protection since the Commodity Exchange Act was enacted in 1936.'' [307] In addition, FIA stated that they were not aware that the Commission has interpreted the statute to require the real time calculation of margin deficits.[308]

Several commenters requested that the Commission refrain from adopting the Proposed Residual Interest Requirement until it conducted further analysis with the industry regarding the costs and benefits of such proposal,[309] with others stating that the Proposed Residual Interest Requirement would mark a significant departure from current market practice and could have a material adverse impact on the liquidity and smooth functioning of the futures and swaps markets.[310]

In addition, the Commission received several specific comments on the potential costs and benefits of the Proposed Residual Interest Requirement. The Congressional Committees requested that the Commission consider the benefits in light of ''both the costs to America's farmers and ranchers and the potential impact on consolidation in the FCM industry,'' and in particular the ''consequences of changing the manner or frequency in which 'residual interest'—the capital an FCM must hold to cover customer positions—is calculated.'' [311]

FIA noted that FCMs would look to avoid the need to use their own resources by seeking to make sure that their customers would not be undermargined, and that this process would involve the FCM collecting greater amounts of collateral from each customer.[312] FIA averred that collecting greater amounts of collateral from customers would be contrary to the desire of the market to reduce the amount of funds maintained with FCMs following the failures of MFGI and PFGI.[313] Moreover, FIA estimated that compliance with the Proposed Residual Interest Requirement would require FCMs or their customers to contribute significantly in excess of $100 billion into customer funds accounts beyond the sum required to meet initial margin requirements, and that the annual financing costs for these increases will range from $810 million to $8.125 billion.[314]

MFA asserted that applying the Proposed Residual Interest Requirement continuously to FCMs ''could significantly increase the operational burdens and costs on FCMs and their customers,'' and that ''any pre-funding obligation is an unacceptable imposition on customers'' because ''[i]t would create margin inefficiencies by causing customers to reserve assets to pre-fund their obligations . . . , and thus, reduce the amount of assets that customers have to use for investment or other purposes.'' [315] FHLB cautioned that ''[w]hile it cannot be disputed that a residual interest buffer should lower the risk that an FCM will fall out of compliance with its segregation requirements, there will likely be a real economic cost associated with maintaining whatever residual interest buffers is established by an FCM'' and that ''the prospects of funding an additional residual interest buffer may discourage FCMs from appropriately demanding collateral from customers in excess of DCO requirements.'' [316] FHLB further noted that the ''funds maintained by an FCM as residual interest can reasonably be expected to earn less than the FCM's unrestricted funds,'' thus, the proposal ''represents a real cost to FCMs'' that will be passed on to customers.[317] Jefferies stated that the Proposed Residual Interest Requirement will result in more assets being held at FCMs' custodial facilities at a time when ''the Commission has been enacting changes that have been shifting capital away from FCMs towards DCO facilities. . . .'' [318] Newedge also stated that the Proposed Residual Interest Requirement ''will result in many FCMs requiring customers to pre-fund and over-margin their positions, which will increase

[298] CMC Comment Letter at 2 (Feb. 15, 2013).

[299] *Id.*

[300] Advantage Comment Letter at 8 (Feb. 15, 2013).

[301] *See id.* at 7–8.

[302] *See id.* at 7.

[303] *See* FIA Comment Letter at 4–5, 12–26 (Feb. 15, 2013); LCH.Clearnet Comment Letter at 4–5 (Jan. 25, 2013).

[304] *See* FIA Comment Letter at 17 (Feb. 15, 2013).

[305] *See id.* at 4, 17.

[306] *Id.* at 4. *See also id.* at 13.

[307] FIA Comment Letter at 2 (June 20, 2013).

[308] *Id.*

[309] *See, e.g.,* AIMA Comment Letter at 3 (Feb. 15, 2013); CCC Comment Letter at 2–3 (Feb. 15, 2013); CHS Hedging Comment Letter at 2–3 (Feb. 15, 2013); CME Comment at 5–7 (Feb. 15, 2013); AFBF Comment Letter at 2 (Feb. 15, 2013); Jefferies Comment Letter at 9 (Feb. 15, 2013); JSA Comment Letter at 1–2 (Feb. 15, 2013); NCBA Comment Letter at 2 (Feb. 15, 2013); NGFA Comment Letter at 5 (Feb. 15, 2013); NIBA Comment Letter at 1–2 (Feb. 15, 2013); TCFA Comment Letter at 2 (Feb. 15, 2013); AFMP Group Comment Letter at 1–2 (Sept. 18, 2013).

[310] *See, e.g.,* MGEX Comment Letter at 2 (Feb. 18, 2013); AIMA Comment Letter at 2 (Feb. 15, 2013); CMC Comment Letter at 2 (Feb. 15, 2013); AFMP Group Comment Letter at 1–2 (Sept. 18, 2013); Rice Dairy LLC Comment Letter at 1 (Feb. 13, 2013).

[311] Congressional Committees Comment Letter at 1 (Sept. 25, 2013).

[312] FIA Comment Letter at 17 (Feb. 15, 2013).

[313] *Id.* at 17. *See also* AFMP Group Comment Letter at 1 (Sept. 18, 2013) (arguing that ''[m]uch more customer money—maybe twice as much—will be at risk in the event of another FCM insolvency.'').

[314] FIA Comment Letter at 16 (Feb. 15, 2013).

[315] MFA Comment Letter at 8 (Feb. 15, 2013).

[316] FHLB Comment Letter at 3–4 (Feb. 15, 2013).

[317] *Id.* at 4 n.5.

[318] Jefferies Comment Letter at 7 (Feb. 15, 2013). *See also* CCC Comment Letter at 2 (Feb. 15, 2013) (arguing that ''the practical effect'' of the Proposed Residual Interest Requirement ''is that FCMs would require commodity customers to contribute significantly more property to their FCM in order to meet new margin requirements far in excess of exchange margin requirements,'' and expressing concern over any requirement that would require customers ''to contribute even more capital to a system [CCC] believe[s] is flawed.'')

their exposure to FCMs'' and ''have a significant impact on customers' own liquidity.'' [319]

Steve Jones expressed the view that ''[w]ith more funds on deposit, a corrupt FCM CEO (or other staff with access to the funds) will simply be more tempted to 'misappropriate' the funds.[320] In addition, Jefferies stated that requiring an FCM to maintain this level of residual interest ''at all times'' ''would impose tremendous financial and operational difficulties'' on FCMs, which would result in tremendous increases to necessary liquidity, and ''negatively impact competitiveness within the industry. . . .'' [321] Jefferies further stated that the Proposed Residual Interest Requirement would impose heavy costs, and that, under the proposal, Jefferies would be required to increase its residual interest by $15 million (non-peak) or $30 million (peak), respectively.[322] Jefferies also stated that the industry would be required to increase its residual interest by $49 billion (non-peak) or $83 billion (peak) at a cost of approximately $2 billion (non-peak) or $5 billion (peak), respectively.[323]

ISDA asserted that the Proposed Residual Interest Requirement will make customers ''self-guaranteeing'' and diminish reliance on the FCM, and that, while this would diminish overall risk of FCM default, it comes at a very significant cost to market participants, market volumes and liquidity.[324] ISDA estimated the funding needed to comply with ''at all times'' portion of the Proposed Residual Interest Requirement to be $73.2 billion, with a long term impact of $335 billion.[325] CHS Hedging argued that the Proposed Residual Interest Requirement ''would substantially increase the amount of capital an FCM would need on hand at all times.'' [326] Further, CHS Hedging stated that ''[i]n the current economic environment, the difference between the cost of capital and the return an FCM could reasonably expect through investment of funds in a compliant and prudent manner would result in a material effect on the business of all FCMs.'' [327] CHS Hedging also stated that FCMs ''could require that customers pre-fund their accounts in anticipation of adverse market movement,'' which ''would likely result in hardship with regard to working capital and may encourage customers to seek alternative methods to hedge their risk. . . .'' [328] CHS Hedging is also of the view that ''pre-funding accounts concentrates additional funds at FCMs, which seems to contradict the spirit of the'' customer protection rules.[329]

Other commenters argued that the Proposed Residual Interest Requirement would be more burdensome on smaller FCMs and customers. Some commenters stated that forcing FCMs to ask customers to pre-fund positions will cause many futures industry participants, including agricultural producers and other customers to suffer a financial burden by tying up capital that is better used in other areas, such as the operation of the feedlot, stocker operation or cow/calf operation,[330] with two commenters asserting that increased costs associated with the use of wire transfers, rather than checks, would have a similar impact.[331] Moreover, NCFC stated that in addition to increased costs for hedgers, the Proposed Residual Interest Requirement ''would be more burdensome to firms like farmer cooperative-owned FCMs'' because they ''are largely homogenous, with virtually all of their commercial customers going deficit at the same time.'' [332] NCFC also asserted that ''[t]o require all deficits to be covered immediately would be overly stringent on these FCMs given the low-risk profile of their customers as hedgers,'' [333] while NIBA noted that the Proposed Residual Interest Requirement ''will actually limit or deny market access to many customers'' (such as farmers, ranchers and other agricultural organizations) ''who use the markets to hedge their financial and commercial risks'' because the proposal ''could raise the cost of hedging product to prohibitive levels.'' [334] NIBA also stated that if small to mid-sized FCMs are forced out of business, market access ''will become limited and more expensive for IBs and their smaller hedge and speculative clients.'' [335] JSA argued that the Proposed Residual Interest Requirement would be ''punitive in a highly competitive environment that already places the midsize operator at a disadvantage to his better capitalized multinational competitors.'' [336] JSA also asserted that the resulting consolidation would cause ''the loss of competitive forces, [the] loss of significant numbers of jobs, and the loss of transparency and liquidity required for a highly functioning hedging environment.'' [337] Moreover, JSA stated that the cost of the Proposed Residual Interest Requirement would result in a higher cost of hedging, which would be become prohibitive and prompt agricultural users to walk away from the futures market.[338] CME averred that mid-sized and smaller FCMs will not have the capital required by the Proposed Residual Interest Requirement and that customers will be required to pre-fund potential margin obligations.[339] CME asserted that, given this increase in cost, some customers may transfer their accounts to the larger, better-capitalized FCMs to reduce the cost of trading,[340] but that agricultural customers ''likely will not be able to transfer to the larger FCMs because they do not fit their customer profile,'' thereby making these customers bear more of the cost burden.[341] CME also stated that the Proposed Residual Interest Requirement will lead to consolidation among FCMs, which will ''actually *increase*[] systemic risk by concentrating risk among fewer market participants.'' [342] Frontier Futures argued that the Proposed Residual Interest Requirement does not give an FCM time to collect margin from customers if the market moves against a customer's position.[343] Because many small customers, including most farmers, do not watch markets constantly, it would be difficult for them to meet margin calls on a

[319] Newedge Comment Letter at 2 (Feb. 15, 2013).

[320] Steve Jones Comment Letter at 1 (Feb. 15, 2013).

[321] Jefferies Comment Letter at 7 (Feb. 15, 2013).

[322] *Id.* at 8.

[323] *Id.*

[324] ISDA Comment Letter at 3 (Feb. 15, 2013). *See also* ISDA Comment Letter at 2–3 (May 8, 2013).

[325] ISDA Comment Letter at 4–5 (Feb. 15, 2013).

[326] CHS Hedging Comment Letter at 2 (Feb. 15, 2013).

[327] *Id.*

[328] *Id.*

[329] *Id.*

[330] TCFA Comment Letter at 2 (Feb. 15, 2013); NCBA Comment Letter at 2 (Feb. 15, 2013); FCStone Comment Letter at 3 (Feb. 15, 2013); Randy Fritsche Comment Letter at 1 (Feb. 15, 2013); Global Commodity Comment Letter at 1 (Feb. 13, 2013); AFMP Group Comment Letter at 1–2 (Sept. 18, 2013).

[331] TCFA Comment Letter at 1 (Feb. 15, 2013); NCBA Comment Letter at 1 (Feb. 15, 2013).

[332] NCFC Comment Letter at 2 (Feb. 15, 2013).

[333] *Id.*

[334] NIBA Comment Letter at 1 (Feb. 15, 2013).

[335] *Id.* at 1–2. NIBA also asserted that ''[t]ransferring accounts between brokerage houses would become very difficult to accomplish'' because open positions would ''need to be margined at the receiving house as well as the transferring one,'' thereby restraining Brokers ''to remain with one FCM, or completely close customers' positions in order to start up again with a different FCM.'' *Id.* at 2.

[336] JSA Comment Letter at 1 (Feb. 15, 2013).

[337] *Id.* at 1–2.

[338] *Id.* at 2.

[339] CME Comment Letter at 5–6 (Feb. 15, 2013).

[340] *Id.* at 6.

[341] *Id.*

[342] *Id.* (emphasis in original). CME also maintained that ''those customers who qualify as [ECPs] can move to the uncleared and less regulated swaps space and decline to use centralized clearing.'' *Id.* at 6–7.

[343] Frontier Futures Comment Letter at 3 (Feb. 15, 2013).

moment's notice, thereby causing FCMs to require significantly higher margins or to liquidate customer positions where margin calls cannot be immediately met.[344] Frontier Futures also asserted that the proposal ''may force a number of small to mid-sized FCMs out of the market,'' making it more expensive, if not impossible, for IBs and small members to clear their business, removing ''significant capital from the futures industry,'' and ''reducing stability to the markets as a whole.'' [345] RJ O'Brien stated that the Proposed Residual Interest Requirement is impractical because many farmers and agricultural clients still use checks and ACH to meet margin calls.[346]

Several commenters presented alternative proposals for the Commission's consideration. For example, two commenters argued that the Commission should consider less costly alternatives to the current residual interest proposal, such as allowing the FCM ''to count guaranty fund deposits with [DCOs] as part of their residual interest,'' [347] with others stating that the residual interest amount that an FCM must carry should only apply to a limited number of its largest customers.[348]

Moreover, and as discussed more fully below, other commenters urged the Commission to conform the final version of proposed Rules 1.20(i)(4), 22.2(f)(6), and 30.7(a) to the current method of calculating residual interest buffer for Cleared Swaps by dropping the words ''at all times.'' [349] For example, ISDA and FIA further urged consideration of an alternative under which the residual interest calculations would be made once a day and that, by the end of a business day, an FCM would be required to maintain a residual interest in its customer funds accounts at least equal to its customers' aggregate margin deficits for the prior trade date.[350] ISDA stated this alternative ''would rationally reduce'' FCMs cost of compliance[351] and that ''[f]or an FCM with robust credit risk management systems, covering end-of-day customer deficits should not be a significant cost.'' [352] ISDA also noted that at the end of the day ''typically, all customer calls have been met, and all customer gains have been paid out; all achieved without the FCM having recourse to its own funding resources.'' [353] FIA asserted that it would ''achieve the Commission's regulatory goals without imposing the damaging financial and operational burdens on FCMs, and the resulting financial burdens on customers.'' [354] LCH.Clearnet argued that customer collateral can be protected by performing the ''LSOC Compliance Calculation'' once per day, prior to settlement at a DCO, because ''prior to meeting a call for an increased requirement, a customer may be under collateralized, but is not collateralized by another customer.'' [355] ISDA and FIA evaluated the costs associated with requiring FCMs to perform the residual interest calculation once each day at the close of business on the first business day following the trade date.[356] ISDA estimated that ''removing the predictive element of FCM funding requirements'' of the ''at all times'' method in favor of the alternative approach would permit markets to ''reap the efficiencies of end-of-day accounting,'' [357] thereby significantly reducing the overall cost of compliance with the regulation. ISDA estimated that for futures, the costs associated with the would be the cost of covering the out-standing margin deficits of between 2 and 5% of its futures customers, and thus would impose only ''incremental funding requirements'' on FCMs.[358] ISDA estimated that the costs of the alternate proposal would be even smaller for cleared swaps, due to the ''more professional'' nature of the market.[359] FIA estimated the financing costs to FCMs of complying with FIA's proposed alternative and concluded that the costs associated with the Proposed Residual Interest Requirement would be approximately ten times the costs associated with the FIA proposal.[360] FIA also concluded that their proposal would not ''impos[e] damaging financial and operational burdens on FCMs . . . and the resulting financial burdens on customers.''[361]

RJ O'Brien also recommended that the Commission drop the ''at all times'' requirement and that the residual interest calculation be done once each day at the close of business on the first business day following the trade date.[362] RJ O'Brien asserted that ''this alternative will reduce the substantial financial burdens'' on customers ''while further enhancing the protection of customer funds.'' [363]

MFA stated that the Commission should modify the proposed FCM residual interest requirement in § 1.20(i)(4) so that it is a ''point of time'' obligation that requires FCMs to ensure they maintain sufficient residual interest ''as of the close of business EST on the business day after the FCM issues a customer's margin call.'' [364] MFA argued that this alternative would ''reduce the stress on the market'' and ''eliminate[] the need for customer pre-funding or intraday margin calls, while also ensuring that * * * FCMs will hold sufficient funds to protect against customer shortfalls.'' [365]

Paul/Weiss stated that the Commission should clarify that the residual interest amount an FCM is required to maintain must be determined ''at the time of any end-of-day, intra-day or special call payment by an FCM to derivatives clearing organization (or other clearing house or clearing intermediary). . . .''[366] Paul/Weiss argued that these payments are ''the relevant points in time at which

[344] *Id.*

[345] *Id.*

[346] RJ O'Brien Comment Letter at 3 (Feb. 15, 2013). *See also* ICA Comment Letter at 1–2 (Feb. 15, 2013).

[347] Newedge Comment Letter at 3 (Feb. 15, 2013). *See also* RJ O'Brien Comment Letter at 5 (Feb. 15, 2013). *Cf.* Frontier Futures Comment Letter at 3 (Feb. 15, 2013) (suggesting further that firm firewalls be put in place between customer funds and an FCM's proprietary funds in the form of approval by an independent agency for an FCM to transfer customer funds and that FCMs ''do their proprietary trading through another FCM thereby engaging the risk management of a third party.'')

[348] *See, e.g.,* Newedge Comment Letter at 3 (Feb. 15, 2013).

[349] *See, e.g.,* LCH.Clearnet Comment Letter at 5 (Feb. 15, 2013); ISDA Comment Letter at 6 (Feb. 15, 2013); RJ O'Brien Comment Letter at 5 (Feb. 15, 2013).

[350] *See* ISDA Comment Letter at 6 (Feb. 15, 2013); FIA Comment Letter at 23–25 (Feb. 15, 2013).

[351] ISDA Comment Letter at 6 (Feb. 15, 2013).

[352] ISDA Comment Letter at 2 (May 8, 2013).

[353] *Id.* ISDA further recommended that because many FCM customers use custodians across the world, ''many customers cannot assure payment of their morning FCM call before the end of the New York day,'' and therefore recommended that Commission study the feasibility of reducing the time in which customers have to meet margin calls, if that is ''imperative.'' *Id.* at 3.

[354] FIA Comment Letter at 23 (Feb. 15, 2013). *See also* ISDA Comment Letter at 4 (May 8, 2013).

[355] LCH.Clearnet Comment Letter at 5 (Feb. 15, 2013).

[356] ISDA Comment Letter at 1–2 (May 8, 2013); FIA Comment Letter at 8–10 (June 20, 2013).

[357] *Id.* at 3.

[358] ISDA Comment Letter at 3–4 (May 8, 2013).

[359] *Id.* at 4.

[360] *See* FIA Comment Letter at 8–10 (June 20, 2013). While the rates used by FIA in this exercise may be conservative, and thus the Commission does not purport to opine on the precise estimates reached, the exercise is nevertheless illustrative and useful for the purpose of comparing the costs of the Residual Interest Proposal, the alternate proposal, and the final rule.

[361] *Id.* at 9.

[362] RJ O'Brien Comment Letter at 5 (Feb. 15, 2013).

[363] *Id.*

[364] MFA Comment Letter at 8–9 (Feb. 15, 2013).

[365] *Id.*

[366] Paul/Weiss Comment Letter at 4 (Feb. 15, 2013).

the FCM is obligated to transfer'' customer margin.[367]

As a threshold matter, and as noted above, the Commission reiterates that the Act *expressly prohibits* an FCM from using the collateral of one customer to margin, secure, or guarantee the trades or contracts of other customers.[368] Congress specifically added this prohibition in response to concerns that certain customers were carrying the risks and obligations of other favored customers.[369] By this token, any customer that is undermargined is being favored over the customers with excess margin, in contravention of section 4d(a)(2) when other customers' funds are being used to cover the undermargined amounts.[370]

Moreover, there is an inescapable mathematical fact: When an FCM meets the DCO's margin requirements, the property used to meet those requirements can only come from one of three sources: the responsible customer, the FCM, or other customers. If the property does not come from the customer whose positions generated the margin requirement or loss, or the FCM itself (that is, the FCM's residual interest), then it must, of necessity, come from other customers.[371] In reviewing the Commission's customer protection rules in light of MFGI and PFGI, staff identified market practices that were in tension with the plain language of the Act, and, as such, the Commission attempted to clarify acceptable practices with respect to these existing statutory requirements with the Proposed Residual Interest Requirement.

As noted above, several commenters strongly supported the Proposed Residual Interest Requirement, noting it is consistent with Congressional intent and the Commission's historical interpretations of the Act. In general, these commenters argued that the proposal correctly shifts the risk of loss to customers with margin deficiencies and away from customers with excess margin. Some of these commenters questioned market cost estimates and statements regarding the technical challenges associated with same-day margin transfers, and urged the Commission to avoid unnecessarily weakening customer protection.

On the other hand, many commenters expressed concern regarding the costs associated with the Proposed Residual Interest Requirement. In particular, commenters stated that requiring the FCM to be in compliance with residual interest requirements ''at all times'' would disparately impact agricultural producers, small and mid-size FCMs, and hedgers; decrease market liquidity; cause market consolidation; and increase systemic risk. Moreover, the Commission notes that many of the estimates of the amount of additional capital required as a result of the Proposed Residual Interest Requirement seem to result from a particular interpretation of the meaning of the ''at all times'' portion of the proposal, and seemed to range from $49 billion (non-peak) and $83 billion (peak),[372] to $73.2 billion,[373] to upwards of $100 billion.[374] Further, commenters asserted that the ''at all times'' portion of the Proposed Residual Interest Requirement would be operationally unachievable, and argued that the Proposed Residual Interest Requirement would curtail competition, concentrate capital in FCMs at a time when the market would like to reduce the amount of customer collateral held at the FCM, and reduce the number of viable FCMs, thereby negatively impacting overall market risk and market access for smaller customers and agricultural hedgers. Commenters also argued that the Proposed Residual Interest Requirement is unnecessary because in their view, customer funds are not at risk when fellow customer accounts are undermargined.[375]

Many of the commenters interpreted the proposal to require FCMs to continuously calculate and monitor the margin deficits of their customers. In the final rulemaking, the Commission is, in general, following the concept advanced by Paul/Weiss and LCH.Clearnet—that is, what is required is that the FCM not ''use'' one customer's property to margin another customer's positions. For an interim phase-in period, the Commission is adopting the alternative proposal recommended by several commenters, including FIA. Thus, for the reasons set forth below, by the Residual Interest Deadline, which is defined in § 1.22(c)(5), an FCM would be required to maintain a residual interest in its customer funds accounts at least equal to its customers' aggregate margin deficits for the prior trade date.[376] The commenters asserted, and the Commission agrees that this alternative would significantly and materially reduce the financial burdens that would otherwise be imposed on

[367] *Id.*

[368] The Commission further notes that current Commission regulations also include such prohibitions. Namely, § 1.22 states that ''No futures commission merchant shall use, or permit the use of, the futures customer funds of one futures customer to purchase, margin, or settle the trades, contracts, or commodity options of, or to secure or extend the credit of, any person other than such futures customer,'' and § 22.2(d)(1) states that ''No futures commission merchant shall use, or permit the use of, the Cleared Swaps Customer Collateral of one Cleared Swaps Customer to purchase, margin, or settle the Cleared Swaps or any other trade or contract of, or to secure or extend the credit of, any person other than such Cleared Swaps Customer.''

[369] *See* 80 Cong. Rec. 6159, 6162 (1936) (statement of Sen. James. P. Pope) (''It further appears that certain favored dealers have not been required actually to put up the money for margins, and have been extended credit in that respect. This gives these favored dealers an advantage. In some instances, large commission firms have become bankrupt and the funds placed with them by a large number of dealers were lost.''); ''Regulation of Grain Exchanges: Before the H. Comm. on Agriculture,'' 73 Cong. 31 (1934) (statement of Dr. J. W. T. Duvel, Chief Grain Futures Admin. Dept. of Agriculture) (''On the commodities exchanges certain classes of speculators and others are able to secure credit but in many cases the credit so extended represents margin money taken from one class of customers and used to extend credit on [sic] margin the trades of others. Our aim is to protect the customers' margin money and thereby protect the market as a whole.'').

[370] As some commenters report, institutional customers in particular are typically undermargined. This could mean that institutional customers are being favored over individual customers. *See, e.g.,* FIA Comment Letter at 15 (Feb. 15, 2013).

[371] As recognized by the Commission previously, the obligation to ensure that one customer's property is not used to margin or settle the trades or contracts of another customer rests with the FCM. *See* 46 FR 11668, 11669. (stating that ''section [4d(a)(2)] of the Act and §§ 1.20 and 1.22 of the Commission's regulations require an FCM to add its own money into segregation in an amount equal to the sum of all customer deficits.''). *See also* CFTC Letter 00–106 (Nov. 22, 2000) (stating that ''each FCM must segregate sufficient funds to cover any amounts it owes to its customers in connection with commodity interest transactions. The funds of multiple customers may be commingled in a single account for the benefit of the customers as a group. If, however, the balance of any one of those customers falls into a deficit, the FCM is obligated to restore the amount of such deficit out of its own funds or property in order to avoid the use of the funds or property or any other customer to meet the obligations of the customer in deficit. The Commission requires FCM's [sic] to maintain minimum levels of capital to help assure that, among other things, they are able to meet such obligations.'').

[372] *See* Jefferies Comment Letter at 8–9 (Feb. 15, 2013). Jefferies states that the proposal would require them to increase residual interest by $15 million (non-peak) to $30 million (peak).

[373] *See* ISDA Comment Letter at 4–5 (Feb. 15, 2013). ISDA argued that the long term impact of the ''at all times'' portion of the proposal could be as high as $335 billion.

[374] *See* FIA Comment Letter at 15–17 (Feb. 15, 2013). FIA also estimated that the annual financing costs associated with the $100 billion cost could range from $810 million to $8.125 billion.

[375] *See* Transcript, U.S. Commodity Futures Trading Commission Agricultural Advisory Committee Meeting held on July 25, 2013, available at *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/aac_transcript072513.pdf.*

[376] *See, e.g.,* Advantage Comment Letter at 8 (Feb. 15, 2013); CMC Comment Letter at 2 (Feb. 15, 2013); CME Comment Letter at 5–6 (Feb. 15, 2013); FIA Comment Letter at 4–5 (Feb. 15, 2013); LCH.Clearnet Comment Letter at 4–5 (Jan. 25, 2013); MGEX Comment Letter at 2 (Feb. 18, 2013); NPPC Comment Letter at 2 (Feb. 15, 2013); RCG Comment Letter at 3 (Feb. 12, 2013); RJ O'Brien Comment Letter at 5 (Feb. 15, 2013); TD Ameritrade Comment Letter at 4–5 (Feb. 15, 2013).

customers and FCMs alike under the Commission's Proposed Residual Interest Requirement [377] because, among other things, this alternate approach would not cause an extreme drain on market liquidity, market consolidation, increase in systemic risk, and detrimental effect on agricultural producers, small and mid-size FCMs, and hedgers.[378]

After careful consideration of the comments and the applicable statutory provisions, the Commission has decided to adopt the Proposed Residual Interest Requirement with modifications.

Section 4d(a)(2) of the Act expressly states that the money, securities, and property received by an FCM from a customer to margin, guarantee, or secure the trades or contracts of that customer shall be separately accounted for and *shall not be* commingled with the funds of such commission merchant or be *used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held*.[379] Moreover, the Commission notes that when section 22 of the rules and regulations of the Secretary of Agriculture under the Act (the predecessor of § 1.22) was adopted in 1937,[380] the year after adoption of the Act, it expressly stated that ''No futures commission merchant shall use, or permit the use of, the money, securities, or property of one customer to margin or settle the trades or contracts, or to secure or extend the credit, of any person other than such customer. The *net equity of one customer shall not be used to carry the trades or contracts or to offset the net deficit of any other customer or person* or to carry the trades or offset the net deficit of the same customer in goods or property not included in the term 'commodity' as defined herein.'' [381] This language addresses, by its terms, more than net deficits, and appears to have remained substantively unchanged for the next four decades.

In 1981, in its Regulation of Domestic Exchange-Traded Commodity Options, the Commission revised § 1.22 to combine segregation requirements for options with existing segregation requirements for futures.[382] In doing so, the Commission generalized the regulatory language and deleted specific references to ''net equity.'' However, neither the adopting release nor the proposing release for the ''Regulation of Domestic Exchange-Traded Commodity Options'' rulemaking indicated an intent to alter or modify the existing segregation requirements for futures.[383]

The current version of § 1.22 states that ''[n]o futures commission merchant shall use, or permit the use of, the futures customer funds of one futures customer to purchase, margin, or settle the trades, contracts, or commodity options of, or to secure or extend the credit of, any person other than such futures customer.''

The Commission's Proposed Residual Interest Requirement was intended to ensure compliance with section 4d(a)(2) and § 1.22 by shifting the risk of loss in the event of a double default back to the customer whose positions incurred the loss and away from those customers with excess margin at the FCM. Contrary to the assertion of certain commenters, whenever an FCM uses the funds of customers with excess margin to collateralize the positions of undermargined customers, the customers with excess funds are subject to heightened risk, and diminished availability of those excess funds for transfer in the event the FCM is in financial distress.

Nonetheless, commenters asserted that there is ambiguity regarding (1) the point at which an FCM has ''used'' or ''permitted the use'' of the futures customer funds of one futures customer to purchase, margin, or settle the trades, contracts, or commodity options of, or to secure or extend the credit of, another futures customer, and (2) what an FCM is required to do to comply with this requirement. Accordingly, the Commission is adopting proposed §§ 1.20(i) and 1.22 with certain modifications.

First, the Commission is revising proposed § 1.20(i) by removing the Proposed Residual Interest Requirement from paragraph (i)(4). In addition, the Commission is revising the language in § 1.22 to add an amended residual interest requirement and additional technical corrections to § 1.20(i) as described further below. Moreover, the Commission is reorganizing proposed § 1.22 as follows: (1) The sentence that reads ''No futures commission merchant shall use, or permit the use of, the futures customer funds of one futures customer to purchase, margin, or settle the trades, contracts, or commodity options of, or to secure or extend the credit of, any person other than such futures customer.'' will be in paragraph (a); (2) the remaining language in proposed paragraph (a) will be deleted; (3) the sentence that reads ''Futures customer funds shall not be used to carry trades or positions of the same futures customer other than in contracts for the purchase of sale of any commodity for future delivery or for options thereon traded through the facilities of a designated contract market.'' will remain in paragraph (b); and (4) as discussed below, a new paragraph (c) will be added to address the revised residual interest requirements.

As highlighted above, several commenters questioned the ability of FCMs to measure compliance on a continuous and real-time basis,[384] and argued that the potential cost associated with a continuous residual interest requirement would have an adverse impact on the market.[385] The Commission is persuaded that continuous calculation and monitoring requirements are not technologically feasible at this time. The Commission is also persuaded that it would not be practical to make such calculations in the futures markets based on intra-day

[377] The Commission notes that representatives from FIA, ISDA, and ADM Investor Services have all indicated in meetings with Commission staff that such an alternative would better protect customers, benefit FCMs risk management practices, and materially reduce many costs associated with the Commission's original proposal.

[378] *See* ISDA Comment Letter at 3 (May 8, 2013) (noting that a substantial majority of customer margin calls are met by 5:00 p.m. on the day the calls are issued and therefore the this approach would not impose the costs and cause the problems associated with the Proposed Residual Interest Requirement); FIA Comment Letter at 9 (June 20, 2013) (estimating that the alternative approach would be 10 times less costly for FCMs to finance). *See also* MFA Comment Letter at 8–9 (Feb. 15, 2013); RJ O'Brien Comment Letter at 5 (Feb. 15, 2013).

[379] *See also* section 4d(f)(2) of the Commodity Exchange Act, as well as § 1.22 of this section and § 22.2(d)(1) of this chapter.

[380] 2 FR 1223, 1225 (July 16, 1937).

[381] *Id.* at 1225 (emphasis supplied).

[382] *See* 46 FR 54500 (Nov. 3, 1981).

[383] *See id.* at 54508 (Final Release) (stating that because the Commission did not receive any comments on its proposed regulations relating to segregation of customer funds, it was adopting the amendments essentially as proposed). In addition, in stating that ''the Commission is now proposing that the option segregation requirements be combined with the existing segregation requirements for futures,'' the proposing release noted that certain definitions ''have also been added or modified to permit defined terms to be used in the sections, as amended, and thereby simplify the regulations.'' *See* 46 FR 33293–01, 33298 (June 29, 1981).

[384] *See, e.g.,* Advantage Comment Letter at 8 (Feb. 15, 2013); CMC Comment Letter at 2 (Feb. 15, 2013); CME Comment Letter at 5–6 (Feb. 15, 2013); FIA Comment Letter at 4–5 (Feb. 15, 2013); LCH.Clearnet Comment Letter at 4–5 (Jan. 25, 2013); MGEX Comment Letter at 2 (Feb. 18, 2013); NPPC Comment Letter at 2 (Feb. 15, 2013); RCG Comment Letter at 3 (Feb. 12, 2013); RJ O'Brien Comment Letter at 5 (Feb. 15, 2013); TD Ameritrade Comment Letter at 4–5 (Feb. 15, 2013).

[385] *See, e.g.,* CMC Comment Letter at 2 (Feb. 15, 2013); CME Comment Letter at 5 (Feb. 15, 2013); MGEX Comment Letter at 2 (Feb. 18, 2013); NPPC Comment Letter at 2 (Feb. 15, 2013); RJ O'Brien Comment Letter at 4 (Feb. 15, 2013).

changes.[386] However, as discussed in more detail below, the Commission is persuaded that the calculations required by the residual interest requirement are feasible using a point in time approach.

As noted above, the Commission is moving the Proposed Residual Interest Requirement from proposed § 1.20(i) to new paragraph (c) in § 1.22. Moreover, and as suggested by commenters,[387] the Commission agrees that a point in time approach to the determination of the adequate size of the residual interest amount would ''ensure that an FCM has appropriately sized the residual interest buffer to cover the aggregated gross margin deficiencies in respect of customer transactions in the relevant origin.'' [388] Further, the Commission agrees that this approach is consistent with the Act and Commission regulations, and would help ensure that the collateral of one customer is never used to margin the positions of another customer.[389] Moreover, the Commission notes that a point in time approach is consistent with the current practice with respect to residual interest buffer calculations for Cleared Swaps and with the approach set forth in JAC Update 12–03.[390]

Accordingly, the Commission is revising the Proposed Residual Interest Requirement as follows. Regulation 1.22 (c)(1) defines the undermargined amount for a futures customer's account as the amount, if any (*i.e.,* the amount must be greater than or equal to zero), by which (i) the total amount of collateral required for that futures customer's positions [391] in that account, at the time or times referred to in § 1.22(c)(2), exceeds (ii) the value of the net liquidating equity for that account, as calculated in § 1.20(i)(2). An FCM is required to perform the calculation set forth in § 1.22(c)(1) on a customer by customer basis. Regulation 1.22(c)(2) requires an FCM to perform a residual interest buffer calculation, at the close of each business day, *based on the information available to the FCM at that time,*[392] by calculating (i) the undermargined amounts, based on the clearing initial margin that will be required to be maintained by that FCM for its futures customers, at each DCO of which the FCM is a member, at the point of the daily settlement (as described in § 39.14) that will complete during the following business day for each such DCO less (ii) any debit balances referred to in § 1.20(i)(4) included in such undermargined amounts.[393]

An FCM is required to perform the calculation in § 1.22(c)(2) once per day, based on the information at the close of business on that day, so that it can determine the amount of customer funds which will be needed to avoid using the funds of one customer to margin, guarantee, or secure the positions of another customer. Consistent with this revised residual interest requirement, § 1.20(i)(4) is being amended to state that the amount of funds an FCM is holding in segregation may not be reduced by any debit balances that the futures customers of the FCM have in their accounts. In addition, § 1.20(i)(2)(ii) is being removed because this requirement is now set forth in § 1.22(c). Consistent with **Federal Register** requirements, § 1.20(i)(2) is being renumbered and, for clarity, the first sentence will be revised to read as follows ''The futures commission merchant must reflect in the account that it maintains for each futures customer the net liquidating equity for each such customer, calculated as follows: the market value of any futures customer funds that it receives from such customer, as adjusted by: . . . .'' [394] Further, under § 1.22(c)(3), an FCM is required, prior to the Residual Interest Deadline, as defined in § 1.22(c)(5), to have residual interest in the segregated account in an amount that is at least equal to the computation set forth in § 1.22(c)(2).[395] However, the amount of residual interest that an FCM must maintain may be reduced to account for payments received from or on behalf of (net of disbursements made to or on behalf of) undermargined futures customers between the close of the previous business day and the Residual Interest Deadline.

Regulation 1.22(c)(4) provides that for purposes of § 1.22(c)(2), an FCM should include, as ''clearing initial margin,'' customer initial margin that the FCM will be required to maintain, for that FCM's futures customers, at another FCM, and, for purposes of § 1.22(c)(3), must do so prior to the Residual Interest Deadline. In other words, § 1.22(c)(4) is intended to make clear that the requirements with respect to futures customer funds used by an FCM that clears through another FCM are parallel to the requirements applied with respect to futures customer funds used when an FCM clears through a DCO.

Regulation 1.22(c)(5) defines the Residual Interest Deadline. Paragraph (c)(5)(i) sets forth that except during the phase-in period defined in paragraph (c)(5)(ii), the Residual Interest Deadline shall be the time of the settlement referenced in paragraph (c)(2)(i), or, as appropriate, (c)(4). However, in response to the comments that urge that achieving compliance with these requirements may take time, and in order to mitigate some of the cost concerns raised by commenters, paragraph (c)(5)(ii) provides that the Residual Interest Deadline during the phase-in period shall be 6:00 p.m.

[386] *See, e.g.,* Advantage Comment Letter at 7 (Feb. 15, 2013); CME Comment Letter at 5 (Feb. 15, 2013); FIA Comment Letter at 4, 15, 21–22 (Feb. 15, 2013); MFA Comment Letter at 8 (Feb. 15, 2013); NPPC Comment Letter at 2 (Feb. 15, 2013); RCG Comment Letter at 3 (Feb. 12, 2013); TD Ameritrade at 4–5 (Feb. 15, 2013). *Cf.* ISDA Comment Letter at 1–2 (Aug. 27, 2013).

[387] *See* ISDA Comment Letter at 6 (Feb. 15, 2013); FIA Comment Letter at 23–25 (Feb. 15, 2013); LCH.Clearnet comment Letter at 5 (Feb. 15, 2013); Paul/Weiss Comment Letter at 4–5 (Feb. 15, 2013); RJ O'Brien Comment Letter at 5 (Feb. 15, 2013).

[388] Paul/Weiss Comment Letter at 4 (Feb. 15, 2013).

[389] *See generally id.;* FIA Comment Letter at 23 (Feb. 15, 2013); ISDA Comment Letter at 4 (May 8, 2013).

[390] Joint Audit Committee Regulatory Update # 12–03, Part 22 of CFTC Regulations—Treatment of Cleared Swaps Customer Collateral—Legally Segregated Operationally Commingled (''LSOC'') Compliance Calculation (Oct. 18, 2012).

[391] For purposes of this calculation, the FCM should include as ''positions'' any trade or contract that (i) would be required to be segregated pursuant to 4d(f) of the Act or (ii) would be subject to § 30.7 of this chapter, but which is, in either case, pursuant to a Commission rule, regulation, or order (or a derivatives clearing organization rule approved in accordance with § 39.15(b)(2) of this chapter), commingled with a contract for the purchase or sale of a commodity for future delivery and any options on such contracts in an account segregated pursuant to section 4d(a) of the Act and should exclude as ''positions'' any trade or contract that, pursuant to a Commission rule, regulation, or order, is segregated pursuant to section 4d(f) of the Act. This requirement is intended to be analogous to the definition of Cleared Swap in § 22.1 of this chapter.

[392] An FCM is not expected to account for changes in circumstances that occur after the close of business and prior to the next business day's settlement, outside of normal end-of-day reconciliation processes. In other words, an FCM may use the information (such as position and value information) available to it at the close of each business day for this calculation.

[393] This subtraction is intended to address the potential double-counting of deficit balances that was pointed out in a number of comments. *See, e.g.,* Vanguard Comment Letter at 8 (Feb. 22, 2013).

[394] As noted in the preamble to the proposal, the purpose of the amendments to 1.20(i) is to ''provid[e] more detail implementing the Net Liquidating Method of calculating segregation requirements.'' 77 FR at 67882.

[395] Following the completion of the phase-in period, when the Residual Interest Deadline moves to the time of settlement, an FCM may be subject to multiple Residual Interest Deadlines, in which case the FCM must maintain residual interest prior to the Residual Interest Deadline in an amount that is at least equal to the *portion of* the computation set forth in § 1.22(c)(2) attributable to the clearing initial margin required by the DCO making such settlement. Thus, where an FCM is a member of more than one DCO and the DCOs conduct their daily settlement cycles at different times, an FCM would be required, at the time of the daily settlement for each DCO, to maintain the proportionate share of residual interest in the futures customer account.

Eastern Time on the date of the settlement referenced in paragraph (c)(2)(i) or, as appropriate, (c)(4). The phased compliance schedule for § 1.22(c) is *set forth in § 1.22(c)(5)(iii). However, the Residual Interest Deadline of 6:00 p.m. Eastern Time in § 1.22(c)(5)(ii) shall begin one year following the publication of this rule in the* ***Federal Register***.[396]

Additionally, in further response to the commenters' request for additional study,[397] in paragraph (c)(5)(iii)(A), the Commission is directing staff to complete and publish for public comment a report (''the Report''), no later than 30 months following the date of publication of this release, addressing, to the extent information is practically available, the practicability (for both FCMs and customers) of moving the Residual Interest Deadline from 6:00 p.m. Eastern Time on the date of the settlement referenced in § 1.22(c)(2)(i) to the time of that settlement (or to some other time of day), including whether and on what schedule it would be feasible to do so. The Report is also expected to address cost and benefit considerations of such potential alternatives. Moreover, staff shall, using the Commission's Web site, solicit public comment and shall conduct a public roundtable regarding specific issues to be covered by the Report. Paragraph (c)(5)(iii)(B) sets forth that within nine months after the publication of the Report, the Commission may (but shall not be required to) do either of the following: (1) terminate the phase-in period, in which case the phase-in shall end as of a date established by order published in the **Federal Register**, which date shall be no less than one year after the date such order is published, or (2) determine that it is necessary or appropriate in the public interest to propose through rulemaking a different Residual Interest Deadline, in which event, the Commission shall establish, by order published in the **Federal Register**, a phase-in schedule. Finally, paragraph (c)(5)(iii)(C) provides that if the phase-in schedule has not been amended pursuant to § 1.22(c)(5)(iii)(B), then the phase-in period shall end on December 31, 2018.

With respect to the suggestion that a portion (*i.e.,* that portion attributable to customer business) of the funds contributed to an exchange's guaranty fund by an FCM should be considered in that FCM's residual interest calculations,[398] the Commission notes that contributions to a guarantee fund are not segregated for the benefit of customers. Rather, they are, by design, available to meet the defaults of other clearing members, and thus cannot be counted as customer segregated funds. As such, the Commission declines to adopt this suggestion.

The Commission also received several requests for clarifications. CIEBA stated that ''while futures market participants may be familiar with terms such as 'residual interest' and the technical features of the proposed rule, other market participants may not appreciate the full scope of the rule and the additional protections provided without further explanation.'' [399] CIEBA requested that the Commission clarify ''how this requirement is intended to work with examples of its application so as to more broadly communicate the Commission's intent to bolster the depth of customer protections to minimize customer risk and promote confidence in the markets.'' [400] The Commission recognizes CIEBA's concern and, as discussed above, has provided clarification in this release regarding the mechanism by which FCMs measure compliance with the statutory requirement of 4d(a)(2). However, the Commission also recognizes that FCMs engage in a broad range of acceptable business practices and should be given flexibility in how best to tailor their businesses to comply with such requirement.

AIMA requested clarification that §§ 1.17(c)(5) and 1.20(i)(4) are not duplicative and therefore does not require FCMs to ''double count'' residual interest.[401] The Commission reiterates that § 1.17(c)(5) and the residual interest requirement now set forth in 1.22(c)(2) are two separate requirements. As discussed above, § 1.17 sets forth the Commission's minimum capital requirements for FCMs and requires, among other things, an FCM to incur a charge to capital for customer and noncustomer accounts that are undermargined beyond a specified period of time.[402] The residual interest requirements, on the other hand, are intended to help make sure that the collateral of one customer is never used to margin the positions of another customer. These requirements are, therefore, not duplicative, and the Final Rule does not actually require an FCM to double count the residual interest amount.[403]

Paul/Weiss requested that the Commission confirm that the requirements of jurisdiction and denomination in § 1.49 do not apply to an FCM's cash management procedures for meeting its residual interest obligation.[404] Paul/Weiss noted that JAC Update 12–03,[405] provides that the denomination and jurisdiction requirements set forth in § 1.49 do not apply to the extent that an FCM deposits additional funds in order to cover margin deficiencies in the Cleared Swaps Customer Account prior to a [406] DCO's settlement.[407] The Commission agrees that, for purposes of meeting any undermargined amount in a customer account with a deposit of additional funds prior to payment to any DCO, the requirements of Commission § 1.49 with respect to denomination or jurisdiction should not apply, and accordingly, they will not.

FCStone asked the Commission to set price limits at levels equal to or below the margin requirement in all commodities to mitigate the potential for under margined customer positions.[408] NPPC requested that the Commission give ''customers the opportunity to 'opt out' of allowing segregated funds to be used outside of the customer accounts,'' so that ''customers can proactively protect their funds from being used for potentially fraudulent purposes'' and when ''coupled with higher fees to help balance the trade off, customers could determine the level of risk to which they are comfortable subjecting their funds.'' [409] The Commission notes that

[396] For further discussion regarding the phase-in schedule for the requirements in § 1.22(c), *see* section III.F.

[397] *See, e.g.,* AIMA Comment Letter at 3 (Feb. 15, 2013); CCC Comment Letter at 2–3 (Feb. 15, 2013); CHS Hedging Comment Letter at 2–3 (Feb. 15, 2013); CME Comment at 5–7 (Feb. 15, 2013); AFBF Comment Letter at 2 (Feb. 15, 2013); Jefferies Comment Letter at 9 (Feb. 15, 2013); JSA Comment Letter at 1–2 (Feb. 15, 2013); NCBA Comment Letter at 2 (Feb. 15, 2013); NGFA Comment Letter at 5 (Feb. 15, 2013); NIBA Comment Letter at 1–2 (Feb. 15, 2013); TCFA Comment Letter at 2 (Feb. 15, 2013); AFMP Group Comment Letter at 1–2 (Sept. 18, 2013).

[398] *See, e.g.,* Newedge Comment Letter at 3 (Feb. 15, 2013); RJ O'Brien Comment Letter at 5 (Feb. 15, 2013).

[399] CIEBA Comment Letter at 3 (Feb. 15, 2013).

[400] *Id.*

[401] *See* AIMA Comment Letter at 3 (Feb. 15, 2013).

[402] *See* section II.F. above.

[403] *See* section II.F. above regarding the requirement set forth § 1.17(c)(5).

[404] Paul/Weiss Comment Letter at 6 (Feb. 15, 2013).

[405] This update provides that, for purposes of meeting any margin deficiency in the cleared swaps customer account with a deposit of additional funds prior to payment to any DCO, the requirements of Commission § 1.49 with respect to denomination or jurisdiction will not apply.

[406] Paul/Weiss Comment Letter at 5–6 (Feb. 15, 2013).

[407] Paul/Weiss Comment Letter at 5–6 (Feb. 15, 2013).

[408] FCStone Comment Letter at 6 (Feb. 15, 2013).

[409] NPPC Comment Letter at 2 (Feb. 15, 2013).

these comments are outside the scope of this rulemaking.

FCStone objected to proposed § 1.20(i), believing that the Commission was mandating changing a customer's account balance to record margin deficits, which they believe would impact the tax treatment of customers' accounts.[410] The Commission clarifies that the proposed amendments were not intended to require any additional charges to individual customer accounts, but to ensure that the FCM separately tracked the sum of such amounts to ensure it was holding residual interest in its segregated accounts greater than the gross total of such undermargined amounts.

10. Segregation Regimes

Several commenters proposed that language contained in customer account agreements used by certain FCMs should be restricted by the Commission. These commenters referred to clauses permitting customer collateral to be pledged, liquidated or transferred by the FCM and asked that the account agreements be viewed as contracts of adhesion due to the necessity to agree to such clauses in order to open a commodity futures trading account.[411] These commenters, among other issues, requested that the Commission limit the ability of FCMs to require such contractual language.

The Commission notes that any such contractual language does not limit the applicability of the Act and Commission regulations with respect to the treatment of customer property by FCMs. The customer protection regime applies to all segregated customer funds regardless of any broader contractual terms.

The specific ability of an FCM to pledge, liquidate or transfer customer collateral is constrained by the Act and Commission regulations regardless of any reference in a customer agreement to such applicable law, or a lack of reference thereto. Section 4d is the relevant provision of the Act that addresses how FCMs must hold customer funds. Section 4d(a)(2) of the Act provides that each FCM must treat and deal with all money, securities, and property received by the FCM to margin, guarantee, or secure the trades or contracts of any customer of the FCM, or accruing to such customer as the result of such trades or contracts, as belonging to the customer. Section 4d(a)(2) further provides that customer funds must be separately accounted for and may not be commingled with the funds of the FCM, or be used to margin or guarantee the trades or contracts, or to secure or extend credit, of any customer or person other than the customer that deposited the funds.

Commission regulations also set requirements on how customer funds may be held. Regulation 1.20(a) provides that all customer funds must be separately accounted for by the FCM and segregated as belonging to commodity or option customers. The funds, when deposited with a bank, trust company, clearing organization, or another FCM must be deposited under an account name that clearly identifies the funds as belonging to customers and shows that the funds are segregated from the FCM's own funds as required by Section 4d(a)(2) of the Act. Regulation 1.20(c) provides that each FCM must treat and deal with the customer funds of a customer as belonging to the customer. The FCM must separately accounted for customer funds and may not commingle the funds with the FCM's own funds, or use the funds to margin, guarantee, or secure futures positions of any person, or extend credit to any person, other than the customer that owns the funds.

Regulation 1.25 sets forth requirements on how FCMs may invest customer funds. Pursuant to § 1.25, an FCM is permitted to use customer funds to purchase permitted investments. The investments, however, are required to be separately accounted for by the FCM under § 1.26, and segregated from the FCM's own assets in accounts that designate the funds as belonging to customers of the FCM and held in segregation as required by the Act and Commission regulations.

FCMs also may sell customer deposited securities under agreements to repurchase the securities pursuant to § 1.25(a)(2)(ii). Regulation 1.25(d)(9) provides that the cash transferred to the segregation account for customer-owned securities sold under a repurchase agreement must be on a payment versus delivery basis, and the customer segregated funds account must receive same-day funds credited to the segregated account simultaneously with the delivery or transfer of the securities from the customer segregated accounts. A customer, however, may condition its deposits of securities with an FCM by requiring that that FCM not engage in reverse repurchase transactions with the customer's collateral.

Accordingly, FCMs do not have an unfettered ability to pledge, rehypothecate, or otherwise use customer funds (including customer deposited securities) for their own benefit or purposes. However, FCMs also have the ability, as limited by all such applicable law and regulation for the benefit of customers, to liquidate customer securities if the customer that deposited the securities fails to meet a margin call. FCMs also may pledge customer deposited securities to DCOs as margin for the customer accounts carried by the FCM. The customer collateral pledged to a DCO, however, also must be held in customer segregated accounts.

Even if transformed as permissible under the Act and regulations and contemplated by customer agreements, such collateral maintains its character as segregated customer property and remains subject to the customer protection regime. Commission staff has further confirmed that there is variability in the FCM community regarding the specific language included in customer account agreements and that not all agreements include broad authorities to the FCM for the use of customer collateral. However, as noted above, the contractual terms and conditions could not result in an FCM holding or using customer funds in a manner that was not in conformity with the Act and Commission regulations.

Several commenters also requested that the Commission provide alternatives to the current segregation regime, including individual segregation, the ability to use third-party custodial accounts, or the ability to opt-out of segregation.[412] While these issues are beyond the scope of the Proposal, the Commission notes that in adopting the final regulations for the protection of Cleared Swaps Customer Collateral in February 2012, it stated that the issue of alternative segregation regimes raise important risk management and cost externality issues, particularly in ensuring that deposited collateral is immediately available to the FCM or DCO in the event of the default of the customer or FCM.[413] The Commission directed staff to continue to analyze different proposals with the goal of developing a proposal to provide additional or enhanced customer protection.[414] In this regard, staff is continuing to review and meet with

[410] FCStone Comment Letter at 4 (Feb. 15, 2013).

[411] *See* Premier Metal Services Comment Letter at 2–3 (Jan. 1, 2013) and ISRI Comment Letter at 4–5 (Dec. 4, 2012), which letters were cited and supported by several other commenters. *See also* Pilot Flying J Comment Letter at 2 (Feb. 14, 2013), which stated that FCMs should not be permitted to use customer funds for outside investments, capitalization or collateralization.

[412] *See, e.g.,* ISRI Comment Letter at 6 (Dec. 4, 2013); AIM Comment Letter at 2–7 (Jan. 24, 2013); MFA Comment Letter at 9 (Feb. 15, 2013); State Street Comment Letter at 2 (Jan. 16, 2013).

[413] 77 FR 6336, 6343 (Feb. 7, 2012).

[414] *Id.*

industry representatives regarding alternative segregation regimes.

In addition, the Commission noted that customer funds held in third-party custodial accounts constitute customer property within the meaning of the Bankruptcy Code. As such, positions and collateral held in third-party accounts are subject to the U.S. Bankruptcy Code and applicable provisions of the Act, which provide for the pro rata share of available customer property. The Commission also received several comments requesting specific and defined protections for funds provided to an FCM by retail counterparties engaged in off-exchange foreign currency transactions.[415] The Proposal, however, focused on customer protection issues in the futures market, and the issue of the protection of funds held by an FCM for retail foreign currency counterparties is beyond the scope of the Proposal.

H. § 1.22: Use of Futures Customer Funds

RCG commented that the proposed amendments to §§ 1.22, 1.23, 30.7(f) and 30.7(g) are inconsistent as to when an FCM should use its own funds to cover margin deficits with § 1.30, which provides that an FCM cannot make an unsecured loan to a customer.[416] The Commission does not believe that the regulations are inconsistent. Regulation § 1.30 provides that an FCM may not make a loan to a customer, unless such loan is done a fully secured basis. Regulations 1.22 and 30.7(f) provide that an FCM cannot use the funds of one customer to secure or extend credit to another customer. Regulations 1.23 and 30.7(g) impose conditions upon when an FCM may withdraw proprietary funds from segregated accounts.

As discussed in greater detail in section II.G.9. above, the Commission has considered the comments and has revised and reorganized § 1.22.

I. § 1.23: Interest of Futures Commission Merchant in Segregated Futures Customer Funds; Additions and Withdrawals

The Commission proposed amending § 1.23 to require additional safeguards with respect to an FCM withdrawing futures customer funds from segregated accounts that are part of the FCM's residual interest in such accounts.

Proposed § 1.23(a) provides that an FCM may deposit unencumbered proprietary funds, including securities from its own inventory that qualify as permitted investments under § 1.25, into segregated futures customer accounts in order to provide a buffer or cushion of funds to protect against the firm failing to maintain sufficient funds in such accounts to meet its total obligations to futures customers.

Under proposed § 1.23(a), an FCM has access to its own funds deposited into futures customer accounts to the extent of the FCM's residual interest in such funds, subject to the restriction on withdrawal of residual interest required to cover undermargined amounts. However, proposed § 1.23(b) prohibits an FCM from withdrawing its residual interest or excess funds from futures customer accounts (any withdrawal not made to or for the benefit of futures customers would be considered a withdrawal of the FCM's residual interest) on any given business day unless the FCM had completed the daily calculation of funds in segregation pursuant to § 1.32 as of the close of the previous business day, and the calculation showed that the FCM maintained excess segregated funds in the futures customer accounts as of the close of business on the previous business day. Proposed § 1.23(b) further requires that the FCM adjust the excess segregated funds reported on the daily segregation calculation to reflect other factors, such as overnight and current day market activity and the extent of current customer undermargined or debit balances, to develop a reasonable basis to estimate the amount of excess funds that remain on deposit since the close of business on the previous day prior to initiating a withdrawal.

The Commission proposed additional required layers of authorization and documentation if the withdrawal exceeds, individually or in the aggregate with other such withdrawals, 25 percent or more of the FCM's residual interest computed as of the close of business on the prior business day. Proposed § 1.23(c) prohibits an FCM from withdrawing more than 25 percent of its residual interest in futures customer accounts unless the FCM's CEO, CFO, or other senior official that is listed as a principal on the firm's Form 7–R registration statement and is knowledgeable about the FCM's financial requirements (''Financial Principal'') pre-approves the withdrawal in writing.

Regulation 1.23(c) requires the FCM to immediately file a written notice with the Commission and with the firm's DSRO of any withdrawal that exceeds 25 percent of its residual interest. The written notice must be signed by the CEO, CFO, or Financial Principal that pre-approved the withdrawal, specifying the amount of the withdrawal, its purpose, its recipient(s), and contain an estimate of the residual interest after the withdrawal. The written notice also must contain a representation from the person that pre-approved the withdrawal that to such person's knowledge and reasonable belief, the FCM remains in compliance with its segregation obligations. Regulation 1.23 further requires that the official, in making this representation, specifically consider any other factors that may cause a material change in the FCM's residual interest since the close of business on the previous business day, including known unsecured futures customer debits or deficits, current day market activity, and any other withdrawals. The written notice would be required to be filed with the Commission and with the FCM's DSRO electronically.

Proposed § 1.23(d) requires an FCM to deposit proprietary funds sufficient to restore the residual interest targeted amount when a withdrawal of funds from segregated futures customer accounts, not for the benefit of the firm's customers, causes the firm to fall below its targeted residual interest in such accounts. The FCM must deposit the proprietary funds into such segregated accounts prior to the close of the next business day. Alternatively, the FCM may revise its targeted residual interest amount, if appropriate, in accordance with its written policies and procedures for establishing, documenting, and maintaining its target residual interest, in accordance with the requirements of proposed § 1.11. Proposed § 1.23 also stated that should an FCM's residual interest, however, be exceeded by the sum of the FCM's futures customers' margin deficits (*i.e.,* undermargined amounts), an amount necessary to restore residual interest to that sum must be deposited immediately. Identical requirements with respect to procedures required for withdrawals of residual interest in Cleared Swaps Customer Collateral Accounts and 30.7 secured accounts were proposed in §§ 22.17(c) and 30.7(g), respectively.

NFA commented recommending that the Commission revise the language in § 1.23 to keep it consistent with the language in NFA Financial Requirements Section 16 (prohibiting withdrawals that are made ''not for the benefit of commodity and option customers and foreign futures and

[415] *See* forex form letter group: Michael Krall; David Kennedy; Robert Smith; Michael Carmichael; Andrew Jackson; Donald Blais; Suzanne Slade; Patricia Horter; JoDan Traders; Jeff Schlink; Sam Jelovich; Matthew Bauman; Mark Phillips; Deborah Stone; Po Huang; Aaryn Krall; Vael Asset Management; Kos Capital; James Lowe; Tracy Burns; Treasure Island Coins; Clare Colreavy, Brandon Shoemaker.

[416] RCG Comment Letter at 7 (Feb. 12, 2013).

foreign options customers'').[417] NFA commented that without a definition of ''proprietary use'' a withdrawal that may not be for an FCM's own proprietary use may still be a withdrawal that is not for the benefit of customers and, therefore, would trigger NFA's approval and notice requirements pursuant to NFA Financial Requirements Section 16, but not the Commission's approval and notice requirements pursuant to § 1.23.[418] NFA also commented that the Commission should remove proposed § 1.23(d)'s reference to ''business days'' in order to ensure that FCMs understand that the requirements related to withdrawals of 25 percent or more apply at all times.[419]

The Commission has considered NFA's comment and is revising § 1.23 to remove the term ''proprietary use'' and is replacing it with the concept of withdrawals that are not made to or for the benefit of customers. The Commission also is revising § 1.23 to remove the reference to ''business days.'' The revisions will more closely align the Commission's and NFA's regulations governing an FCM's withdrawal of proprietary funds from a segregated account by making the language and conditions more consistent. This consistency of the Commission and NFA requirements is appropriate as it will allow FCMs to operate under one set of conditions, while also retaining the overall policy goals of the Commission to limit an FCM's ability to withdraw funds from segregated accounts until the FCM can be reasonably assured that the funds are excess, proprietary funds.[420]

NFA further requested the Commission to clarify that pre-approval of a series of transactions that in the aggregate exceeded the 25 percent threshold would not require after the fact approvals of the first transactions of the series, but only approvals of the transactions resulting in the 25 percent threshold being exceeded.[421] The Commission confirms that an FCM would need to obtain the necessary approvals only for the transaction that caused the withdrawals to exceed the 25 percent threshold.

Jefferies commented that it generally supported proposed amendments to § 1.23, but stated that requiring FCMs to report when they draw down more than 25 percent of their residual interest will discourage an FCM from voluntarily adding to its residual interest.[422] Jefferies commented that FCMs should be permitted to withdraw any residual interest amount in excess of their target level and to withdraw up to 25 percent of the target level before providing notice, or if the last calculated residual interest was below the target level, the calculation should be 25 percent of the lower amount.[423] LCH.Clearnet and the FIA also recommended revising §§ 1.23(d) and 22.17(c) to apply only to withdrawal of FCM funds in excess of 25 percent of the FCM's targeted residual interest, rather than on 25 percent of the total residual interest in the customer segregated account, specifically to ensure that FCMs have no disincentive to maintain significant excess funds above the targeted residual interest segregation at DCOs for swaps clearing.[424]

The Commission does not believe that substituting the targeted residual amount for the actual residual interest amount would appropriately focus management attention on significant withdrawals relative to the actual, not just target, excess, as well as clearly establish a chain of responsibility for such withdrawals, as is the intended purpose of the proposed regulation. The Commission clarifies that pre-approval would be required, with respect to a series of transactions, for the transactions which would result in the threshold being exceeded and not earlier transactions in the series. Accordingly, the Commission is adopting § 1.23 and the conforming provisions in §§ 22.17 and 30.7(g), with changes as recommended by NFA substituting language ''not for the benefit of customers'' (with description of customer as applicable to each such provision) for ''proprietary use'' and eliminating the reference to business days.[425]

In addition, and in light of the changes discussed herein with respect to the residual interest requirements set forth in §§ 1.22, 22.2, and 30.7, the Commission is amending § 1.23 and the conforming provisions in §§ 22.17 and 30.7(g) to make clear that if an FCM's residual interest is less than the amounts required to be maintained in § 1.22, 22.2(f)(6), or 30.7(f), as applicable, at any particular point in time, the FCM must immediately restore the residual interest to exceed the sum of such amounts.

J. § 1.25: Investment of Customer Funds

1. General Comments Regarding the Investment of Customer Funds

Regulation 1.25 sets forth the financial investments that an FCM or DCO may make with customer funds. The Commission received 32 comment letters regarding the investment and handling of customer funds by FCMs and DCOs.[426] In general, all of the commenters supported the position that FCMs and DCOs only be allowed to make safe/non-speculative investments of customer funds and not be allowed to add risk that customers are unaware of or do not sanction. More specifically, 29 of the commenters proposed that the Commission amend its regulations to provide commodity customers with the ability to ''opt out'' of granting FCMs permission to invest their funds (including hypothecation and rehypothecation).[427] Additionally,

[417] NFA Comment Letter at 14 (Feb. 15, 2013).

[418] *Id.*

[419] *Id.*

[420] The Commission also is making comparable revisions to §§ 22.17(c) and 30.7(g) in light of NFA's comments.

[421] *Id.*

[422] Jefferies Comment Letter at 4–6 (Feb. 15, 2013).

[423] *Id.*

[424] LCH.Clearnet Comment Letter at 7 (Jan. 25, 2013); FIA Comment Letter at 6 (Feb. 15, 2013).

[425] *See* NFA Comment Letter at 14 (Feb. 15, 2013).

[426] Schippers Comment Letter (Dec. 10, 2013), Randy Fritsche Comment Letter (Feb. 14, 2013), NPPC Comment Letter at 2 (Feb. 14, 2013), Strelitz/California Metal X Comment (Jan. 15, 2013), Premier Metal Services Comment Letter at 4 (Jan. 3, 2013), ISRI Comment Letter at 5–7 (Dec. 4, 2012), AIM Comment Letter at 4 (Jan. 24, 2013), Kripke Enterprises Comment Letter (Dec. 12, 2012), Manitoba Comment Letter (Dec. 13, 2012), Solomon Metals Corp. Comment Letter (Jan. 15, 2013), Michael Krall Comment Letter (Dec. 17, 2012), David Kennedy Comment Letter (Dec. 17, 2012), Robert Smith Comment Letter (Dec. 17, 2012), Michael Carmichael Comment Letter (Dec. 17, 2012), Andrew Jackson Comment Letter (Dec. 17, 2012), Donald Blais Comment Letter (Dec. 17, 2012), Suzanne Slade Comment Letter (Dec. 17, 2012), Patricia Horter Comment Letter (Dec. 17, 2012), JoDan Traders Comment Letter (Dec. 17, 2012), Jeff Schlink Comment (Dec. 18, 2012), Sam Jelovich Comment Letter (Dec. 18, 2012), Matthew Bauman Comment Letter (Dec. 20, 2012), Mark Phillips Comment Letter (Dec. 22, 2012), Deborah Stone Comment Letter (Dec. 24, 2012), Po Huang Comment Letter (Dec. 24, 2012), Aarynn Krall Comment Letter (Jan. 8, 2013), Vael Asset Management Comment Letter (Jan. 10, 2013), Kos Capital Comment Letter (Jan. 11, 2013), James Lowe Comment Letter (Jan. 13, 2013), Tracy Burns Comment Letter (Jan. 14, 2013), Treasure Island Coins Comment Letter (Jan. 14, 2013), and Clare Colreavy Comment Letter (Jan. 9, 2013).

[427] NPPC Comment Letter at 2 (Feb. 14, 2013), Premier Metal Services Comment Letter at 4 (Jan. 3, 2013), ISRI Comment Letter at 5–7 (Dec. 4, 2012), AIM Comment Letter at 4 (Jan. 24, 2013), Kripke Enterprises Comment Letter (Dec. 12, 2012), Manitoba Comment Letter (Dec. 13, 2012), Solomon Metals Corp. Comment Letter (Jan. 15, 2013), Michael Krall Comment Letter (Dec. 17, 2012), David Kennedy Comment Letter (Dec. 17, 2012), Robert Smith Comment Letter (Dec. 17, 2012), Michael Carmichael Comment Letter (Dec. 17, 2012), Andrew Jackson Comment Letter (Dec. 17, 2012), Donald Blais Comment Letter (Dec. 17, 2012), Suzanne Slade Comment Letter (Dec. 17, 2012), Patricia Horter Comment Letter (Dec. 17, 2012), JoDan Traders Comment Letter (Dec. 17, 2012), Jeff Schlink Comment Letter (Dec. 18, 2012), Sam Jelovich Comment Letter (Dec. 18, 2012), Matthew Bauman Comment Letter (Dec. 20, 2012), Mark Phillips Comment Letter (Dec. 22, 2012), Deborah Stone Comment Letter (Dec. 24, 2012), Po Huang Comment Letter (Dec. 24, 2012), Aarynn

seven of the 29 commenters requested that the Commission also mandate that an FCM cannot prevent a customer who so ''opts out'' from continuing to trade through that FCM merely because the customer elected to ''opt out.'' [428]

The Commission did not propose to amend the list of permitted investments set forth in § 1.25, and believes that the current investments and regulatory requirements establish an appropriate balance between providing investment opportunities for FCMs with the overall objective of protecting customer funds. As further discussed in section II.L. below, the Commission also is amending § 1.29 to explicitly provide that an FCM is responsible for any losses resulting from the investment of customer funds under § 1.25.

The Commission further notes that the current regulatory structure does not provide for a system whereby customers can elect to ''opt-out'' of segregation or § 1.25. In the event of the insolvency of an FCM, where there also was a shortfall in customer funds, customers would be entitled to a pro-rata distribution of customer property under section 766 of the U.S. bankruptcy code.[429] Therefore, even if a customer was permitted by the FCM to ''opt-out'' of segregation, the funds held by the FCM would be pooled with other customer funds and distributed on a pro-rata basis to all customers participating in that account class.

2. Reverse Repurchase Agreement Counterparty Concentration Limits

Regulation 1.25 provides that FCMs and DCOs may use customer funds to purchase securities from a counterparty under an agreement for the resale of the securities back to the counterparty (''reverse repurchase agreements''). Regulation 1.25 places conditions on reverse repurchase agreements, including, limiting counterparties to certain banks and government securities brokers or dealers, and prohibiting an FCM or DCO from entering into such agreements with an affiliate. Regulation 1.25(b)(3)(v) also imposes a counterparty concentration limit on reverse repurchase agreements that prohibits an FCM or DCO from purchasing securities from a single counterparty that exceeds 25 percent of the total assets held in segregation by the FCM or DCO.

The Commission proposed to amend § 1.25(b)(3)(v) to require an FCM or DCO to aggregate the value of the securities purchased under reverse repurchase agreements if the counterparties are under common control or ownership. The aggregate value of the securities purchased under a reverse repurchase agreement from the counterparties under common ownership or control could not exceed 25 percent of the total assets held in segregation by the FCM or DCO. The Commission proposed the amendment as it believed that the expansion of the counterparty concentration limitation to counterparties under common ownership or control is consistent with the original intent of the regulation, and to minimize potential losses or disruptions due to the default of a counterparty.

The Commission received comments from LCH.Clearnet and CFA in support of the proposed amendments.[430] No other comments were received. The Commission is adopting the amendments as proposed.

K. § 1.26: Deposit of Instruments Purchased With Futures Customer Funds

Regulation 1.26 requires each FCM or DCO that invests customer funds in instruments listed under § 1.25 to separately account for such instruments and to segregate the instruments from its own funds. An FCM or DCO also must deposit the instruments under an account name which clearly shows that they belong to futures customers and that the instruments are segregated as required by the Act and Commission regulations. The FCM or DCO also must obtain and retain in its files a written acknowledgment from the depository holding the instruments stating that the depository was informed that the instruments belong to futures customers and that the instruments are being held in accordance with the provisions of the Act and Commission regulations.

The Commission proposed amending § 1.26 to specify how direct investments by FCMs and DCOs in money market mutual funds (''MMMFs'') that qualify as permitted investments under § 1.25 must be held, and to adopt a Template Letter to be used with respect to direct investments in qualifying MMMFs. Like the proposed Template Letters for §§ 1.20 and 30.7, the proposed Template Letter for § 1.26 contained provisions providing for read-only access and release of shares upon instruction from the director of the Division of Clearing and Risk, the director of the Division of Swap Dealer and Intermediary Oversight, or any successor divisions, or such directors' designees.

With respect to the Template Letter for MMMFs, ICI noted that costs to create electronic access to FCM accounts at an MMMF would be ''borne by all investors and not just by FCMs,'' which likely only constitute a small percentage of an MMMF's investors.[431] As an alternative, ICI proposed that the Template Letter be amended to require the MMMF to provide FCM account data promptly (*i.e.,* within 48 hours) upon request.[432] ICI also commented that the Commission should confirm: (1) The ''examination or audit'' of the accounts authorized by the acknowledgment letter is limited to verification of account balances and that further inspection of an MMMF itself would be referred to the SEC as primary regulator; and (2) the proposal would require only those MMMFs in which FCMs directly invest customer funds (as opposed to those held through intermediated positions like omnibus accounts or intermediary-controlled accounts) to agree to provide FCM account information.[433]

The Commission originally proposed one Template Letter, Appendix A to § 1.26, to be used by both FCMs and DCOs when investing customer funds in an MMMF. However, as noted above in the discussion of the § 1.20 Template Letters, the Commission has determined to eliminate the read-only access requirement for DCOs. Therefore, the Commission is adopting different Template Letters for FCMs and DCOs in § 1.26. The Template Letter specific to FCMs is now set forth in Appendix A to § 1.26, and the Template Letter for DCOs is set forth in Appendix B to § 1.26. The Commission has made other modifications to the § 1.26 Template Letters consistent with the modifications to the § 1.20 Template Letters.

The Commission also confirms that examination of accounts authorized by the acknowledgment letter would not involve regulation or examination of the MMMF itself, over which the Commission does not have supervisory or regulatory authority. The examination would be limited to

Krall Comment Letter (Jan. 8, 2013), Vael Asset Management Comment Letter (Jan. 10, 2013), Kos Capital Comment Letter (Jan. 11, 2013), James Lowe Comment Letter (Jan. 13, 2013), Tracy Burns Comment Letter (Jan. 14, 2013), Treasure Island Coins Comment Letter (Jan. 14, 2013), and Clare Colreavy Comment Letter (Jan. 9, 2013).

[428] NPPC Comment Letter at 2 (Feb. 14, 2013); Premier Metal Services Comment Letter at 4 (Jan. 3, 2013); ISRI Comment Letter at 6 (Dec. 4, 2012); AIM Comment Letter at 6 (Jan. 24, 2013); Kripke Enterprises Comment Letter (Dec. 10, 2012); Manitoba Comment Letter (Dec. 13, 2012); and Solomon Metals Corp Comment Letter (Jan, 15, 2013).

[429] 11 U.S.C. 766.

[430] LCH.Clearnet Comment Letter at 4 (Jan. 25, 2013); CFA Comment Letter at 6 (Feb. 13, 2013).

[431] ICI Comment Letter at 4–5 (Jan. 14, 2013).

[432] *Id.* at 5.

[433] *Id.* at 4–6 (Jan.14, 2013).

verification of the account shares of the FCM or DCO, and the Template Letters required under § 1.26 are solely applicable to directly-held investments in MMMFs. For the purpose of clarification, an FCM or DCO that holds shares of an MMMF in a custodial account at a depository (not directly with the MMMF or its affiliate) is required to execute the Template Letter set forth in Appendix A or B of Regulation 1.20, as applicable. In addition, a MMMF would be required to provide the Commission with read-only access to accounts holding customer funds only if the FCM directly deposits customer funds with the MMMF.

Proposed paragraph (b) of § 1.26 has been modified to include a reference to Appendix B to § 1.20. Otherwise, the Commission is adopting § 1.26 as proposed.

L. § 1.29: Increment or Interest Resulting From Investment of Customer Funds

1. FCM's Responsibility for Losses Incurred on the Investment of Customer Funds

Regulation 1.29 currently provides that an FCM or DCO is not required to pass the earnings from the investment of futures customer funds to the futures customers. An FCM or DCO may retain any interest or other earnings from the investment of futures customer funds.

The Commission proposed to amend § 1.29 to explicitly provide that an FCM or DCO is responsible for any losses incurred on the investment of customer funds. Investment losses cannot be passed on to futures customers. As the Commission noted in the Proposal, an FCM may not charge or otherwise allocate investment losses to the accounts of the FCM's customers. To allocate losses on the investment of customer funds would result in the use of customer funds in a manner that is not consistent with section 4d(a)(2) and § 1.20, which provides that customer funds can only be used for the benefit of futures customers and limits withdrawals from futures customer accounts, other than for the purpose of engaging in trading, to certain commissions, brokerage, interest, taxes, storage or other fees or charges lawfully accruing in connection with futures trading.[434] Section 4d(b) of the Act also provides that it is unlawful for a DCO to use customer funds as belonging to any person other than the customers of the FCM that deposited the funds with the DCO. Accordingly, such investment losses are the responsibility of the FCM or DCO, as applicable. Similar regulations were proposed for Cleared Swaps Customer Collateral under part 22 (§ 22.2(e)(1)), and for 30.7 customer funds under part 30 (§ 30.7(i)).

FIA and CFA supported the proposed amendments to § 1.29.[435] No other comments were received. The Commission adopts the amendments to §§ 1.29, 22.2(e)(1), and 30.7(i) as proposed.

2. FCM's Obligation in Event of Bank Default

The Commission requested comment on the extent of an FCM's responsibility to cover losses in the event of a default of by a bank holding customer funds. The CFA commented that FCM's should be responsible as such an obligation will require that FCMs conduct adequate due diligence on the banks in which they place customers' funds, a factor that should limit the effect of a related future bank failure.[436]

The FIA noted that the Commodity Exchange Authority issued an Administrative Determination in 1971 setting out the appropriate standard of liability for an FCM in the event of a bank default.[437] The FIA also stated that the deposit of customer funds in a bank or trust company is not an investment of customer funds under § 1.25, but is a requirement by the Act and Commission regulations.[438] The FIA stated that FCMs should not be strictly liable for a bank's failure, and that to hold FCMs to such a standard would presume that FCMs have the ability to know more about a bank than the regulatory authorities responsible for overseeing the banks.[439]

The FIA further stated that the Commission's new § 1.11 will require each FCM to establish and enforce written policies and procedures reasonably designed to assure compliance with the segregation requirements. The policies and procedures also must include a process for the evaluation of depositories, and a program to monitor a depository on an ongoing basis, including a thorough due diligence review of each depository at least annually. FIA notes that the policies and procedures will be subject to Commission and DSRO review, and that either the Commission or DSRO can direct the FCM to make any changes to address identified weaknesses in the policies or procedures, or in their enforcement.[440]

Advantage stated that the deposit of customer funds into a bank is not an investment of the funds, and FCMs should be able to assume that banks are properly vetted by the relevant banking and futures regulatory authorities.[441]

The Commission has considered the issue and believes the issue of depository risk raises important legal and policy issues that were not addressed in the Administrative Determination. There are considerable reasons to question whether the Administrative Determination is consistent with the CEA and the Commission's regulations thereunder. Customers entrust their funds to FCMs, who are required by the Act and Commission regulations to treat the funds as belonging to the customers, to segregate the funds from the FCM's own funds, and to hold such funds in specially designated accounts that clearly state that the funds belong to commodity customers of the FCM and are being held as required by the Act and Commission regulations. Customers do not select the depositories to hold these funds; FCMs do. FCMs are responsible for conducting the initial due diligence and ongoing monitoring of depositories holding customer funds. Moreover, as a practical matter, FCMs are in a better position than customers to perform these functions, as well as in a better position than the customers individually to make claim in the insolvency proceeding for the depository.[442]

[434] 77 FR 67866, 67888.

[435] FIA Comment Letter at 30–31 (Feb. 15, 2013); CFA Comment Letter at 6 (Feb. 13, 2013).

[436] CFA Comment Letter at 6 (Feb. 13, 2013).

[437] FIA Comment Letter at 32–33 (Feb. 15, 2013). The Administrative Determination applies to both FCM and DCO deposits at banks, and provides as follows:

To: Associate Administrator

Division Directors

Regional Directors

If a futures commission merchant or a clearing association deposits regulated commodity customers' funds in a bank and the bank is later closed and unable to repay the funds, the liability of the futures commission merchant or clearing association would depend upon the manner in which the account was handled. It would not be liable if it had used due care in selecting the bank, had not otherwise breached its fiduciary responsibilities toward the customers, and had fully complied with the requirements of the Commodity Exchange Act and the regulations thereunder relating to the handling of customers' funds. If two banks were available in a particular city only one of which was a member of FDIC and the futures commission merchant or clearing association without a compelling reason elected to use the nonmember bank, we would contend that it had not used due care in its selection.

Administrative Determination No. 230 issued by Alex Caldwell, Administrator, Commodity Exchange Authority (Nov. 23, 1971).

[438] FIA Comment Letter at 32–33 (Feb. 13, 2013).

[439] *Id.*

[440] *Id.*

[441] Advantage Comment Letter at 3 (Feb. 15, 2013).

[442] By a parity of reasoning, this would also apply to relationships between DCOs and FCMs. Indeed, it would be difficult to see how a DCO would be liable for such losses, but an FCM would not.

Importantly, the AD fails to address the question of precisely *which* customers are exposed to depository losses, and how much should be allocated to each such customer. This question is particularly important in the context of omnibus customer accounts permitted in the futures industry. Would losses be allocated to persons who are customers at the point the depository becomes insolvent, to persons who were customers at any point the FCM maintained funds at the depository, or to persons who were customers at the point the losses were crystalized? Would losses be allocated to all customers, or could certain favored customers avoid such exposure by negotiation? If the depository lost only securities, would customers who deposited only cash share in the loss? If the depository lost only cash, would customers who deposited only securities share in the loss? Would customers whose margin was all used to cover requirements at the DCO share in losses of funds at a depository other than a DCO? Moreover, would customers to whom losses were allocated share in dividends recovered from the estate of the defaulting depository? How would such customers have the practical opportunity to demonstrate their claims in such a proceeding? How and when would such recoveries be distributed to such customers? These practical questions, none of which was answered in the Administrative Determination, call its wisdom into question.[443]

Accordingly, the Commission has directed staff to inquire into these issues, and to develop an appropriate proposed rulemaking.

M. § 1.30: Loans by Futures Commission Merchants: Treatment of Proceeds

Regulation 1.30 provides that an FCM may lend its own funds to customers on securities and property pledged by such customers, and may repledge or sell such securities and property pursuant to specific written agreement with such customers. This provision generally allows customers to deposit non-cash collateral as initial and variation margin. Absent the provision, an FCM may be required to liquidate the non-cash collateral if the customer was subject to a margin call that could not be met with other assets in the customer's account. Regulation 1.30 further provides that the proceeds of loans used to margin the trades of customers shall be treated and dealt with by an FCM as belonging to such customers, in accordance with and subject to the provisions of the Act and regulations.

The Commission proposed to amend § 1.30 by adding that an FCM may not lend funds to a customer for margin purposes on an unsecured basis, or secured by the customer's trading account. The Commission stated in the Proposal that it did not believe that FCMs extended unsecured credit as a common practice, as the FCM would be required to take a 100 percent charge to capital for the value of the unsecured loan under § 1.17. The Commission also noted that a trading account did not qualify as collateral for the loan under § 1.17 and the FCM would have to take a charge to capital for the full value of the unsecured loan. The Commission further noted that the proposed amendment to § 1.30 was consistent with CME Rule 930.G, which provides that a clearing member may not make loans to account holders to satisfy their performance bond requirements unless such loans are secured by readily marketable collateral that is otherwise unencumbered and which can be readily converted into cash.[444]

RCG commented that it believes that the proposal prohibiting an FCM from making unsecured loans to customers contradicts proposed § 1.22 as it applies to funding customers' margin deficits.[445] The Commission notes that the requirement in § 1.22 for an FCM to cover an undermargined account with its own funds is intended to ensure that the FCM complies with section 4d of the Act by not using the funds of one futures customer to margin or guarantee the commodity interests of another customer. The FCM is obligated under section 4d to maintain sufficient funds in segregation to cover undermargined accounts. The FCM, however, is not loaning funds to a particular customer as performance bond is contemplated by § 1.30. When the FCM deposits proprietary funds into segregated accounts under § 1.22, the FCM is not loaning any particular customer funds, and the customers with an undermargined account are not credited with an increase in their cash balance.

Newedge also requested confirmation the proposed prohibition in § 1.30 preventing an FCM from loaning unsecured funds to a customer to finance such customer's trading would not prohibit an FCM, when computing a customer's margin requirement, from giving credit for the customer's long option value. The Commission confirms that an FCM may continue to consider a customer's long option value when computing such customer's overall account value and margin requirements.[446]

The Commission is adopting the amendments to § 1.30 as proposed.

N. § 1.32: (§ 22.2(g) for Cleared Swaps Customers and § 30.7(l) for Foreign Futures and Foreign Options Customers): Segregated Account: Daily Computation and Record

The Commission proposed to amend § 1.32 to require additional safeguards with respect to futures customer funds on deposit in segregated accounts, and to require FCMs to provide twice each month a detailed listing to the Commission of depositories holding customer funds.[447]

Regulation 1.32 requires an FCM to prepare a daily record as of the close of business each day detailing the amount of funds the firm holds in segregated accounts for futures customers trading on designated contract markets, the amount of the firm's total obligation to such customers computed under the Net Liquidating Equity Method, and the amount of the FCM's residual interest in the futures customer segregated accounts. In performing the calculation, an FCM is permitted to offset any futures customer's debit balance by the market value (less haircuts) of any readily marketable securities deposited by the particular customer with the debit balance as margin for the account. The amount of the securities haircuts are as set forth in SEC Rule 15c3–1(c)(vi).

FCMs are required to perform the segregation calculation prior to noon on the next business day, and to retain a record of the calculation in accordance with § 1.31. Both the CME and NFA require their respective member FCMs to file the segregation calculations with the CME and NFA, as appropriate, each business day. FCMs, however, are only required to file a segregation calculation with the Commission at month end as part of the Form 1–FR–FCM (or FOCUS Reports for dual-registrant FCM/BDs). Regulation 1.12, as discussed in section II.C. above, requires the FCM to provide immediate notice to the Commission and to the firm's DSRO if the FCM is undersegregated at any time.

[443] This discussion does not apply to funds that have been deposited with a third-party depository selected by a customer.

[444] *See* CME rulebook at *www.cmegroup.com/rulebook/CME/I/9/9.pdf*.

[445] RCG Comment Letter at 4 (Feb. 12, 2013).

[446] Newedge Comment Letter at 5 (Feb. 15, 2013).

[447] The Commission also proposed amendments to § 22.2(g) and § 30.7(l) to impose requirements for Cleared Swaps and foreign futures and foreign options transactions, respectively, that correspond to the proposed amendments for § 1.32. The comments for §§ 1.32, 22.2(g), and 30.7(l) are addressed in this section.

The Commission proposed to amend § 1.32 to require each FCM to file its segregation calculation with the Commission and with its DSRO each business day. The Commission also proposed to amend § 1.32 to require FCMs to use the Segregation Schedule contained in the Form 1–FR–FCM (or FOCUS Report for dual-registrant FCM/BDs) to document its daily segregation calculation.[448]

As previously noted, the CME and NFA require their respective member FCMs to file their segregation calculations with them on a daily basis. The CME and NFA also require the FCMs to document their segregation calculation using the Segregation Schedule contained in the Form 1–FR–FCM. Therefore, the additional requirement of filing a Segregation Schedule with the Commission is not a material change to the regulation and is consistent with current practices.[449]

The Commission stated in the Proposal that the filing of daily Segregation Schedules by FCMs will enhance its ability to monitor and protect customer funds as the Commission will be able to determine almost immediately upon receipt of the Segregation Schedule whether a firm is undersegregated and immediately take steps to determine if the firm is experiencing financial difficulty or if customer funds are at risk.[450]

The Commission also proposed to require an FCM to file its Segregation Schedule with the Commission and with the FCM's DSRO electronically using a form of user authentication assigned in accordance with procedures established or approved by the Commission. The Commission currently receives the Segregation Schedule electronically via the WinJammer filing system and the proposal would continue to require FCMs to submit the forms using WinJammer.

The Commission also proposed to amend § 1.32(b) to provide that in determining the haircuts for commercial paper, convertible debt instruments, and nonconvertible debt instruments deposited by customers as margin, the FCM may develop written policies and procedures to assess the credit risk of the securities as proposed by the SEC and discussed more fully in section II.F. above. If the FCM's assessment of the credit risk is that it is minimal, the FCM may apply haircut percentages that are lower than the 15 percent default percentage under SEC Rule 15c3–1(c)(2)(vi).

The Commission also proposed to amend § 1.32 by requiring each FCM to file detailed information regarding depositories and the substance of the investment of customer funds under § 1.25. Proposed paragraphs (f) and (j) of § 1.32 require each FCM to submit to the Commission and to the firm's DSRO a listing of every bank, trust company, DCO, other FCM, or other depository or custodian holding customer funds. The listing must specify separately for each depository the total amount of cash and § 1.25 permitted investments held by the depository for the benefit of the FCM's customers. Specifically, each FCM must list the total amount of cash, U.S. government securities, U.S. agency obligations, municipal securities, certificates of deposit, money market mutual funds, commercial paper, and corporate notes held by each depository, computed at current market values. The listing also must specify: (1) If any of the depositories are affiliated with the FCM; (2) if any of the securities are held pursuant to an agreement to resell the securities to a counterparty (reverse repurchase agreement) and if so, how much; and (3) the depositories holding customer-owned securities and the total amount of customer-owned securities held by each of the depositories.

Each FCM is required to submit the listing of the detailed investments to the Commission and to the firm's DSRO twice each month. The filings must be made as of the 15th day of each month (or the next business day, if the 15th day of the month is not a business day) and the last business day of the month. The filings are due to the Commission and to the firm's DSRO by 11:59 p.m. on the next business day.

Proposed paragraph (k) of § 1.32 requires each FCM to retain the Segregation Statement prepared each business day and the detailed investment information, together with all supporting documentation, in accordance with § 1.31.

FIA generally supported the proposal.[451] FIA noted that proposed § 1.32(a) requires an FCM to compute its daily segregation requirement on a currency-by-currency basis, and requested that the Commission confirm that a single Segregation Schedule can be completed for each account class (*i.e.,* futures customers funds, Cleared Swaps Customers funds, and § 30.7 customer funds) on a U.S. dollar-equivalent basis. FIA further stated that the detail regarding the investment of customer funds provided by NFA on its Web site is the appropriate level of detail that should be made public because additional detail would disclose proprietary financial and business information.[452]

Jefferies supported the proposal, and recommended that the listing of detailed investments should include all investments, including cash and other investments, regardless of where the investments are held, and should provide greater transparency for the FCMs' customers.[453] MFA supported the proposed amendments to § 1.32 to require FCMs to provide the Commission and their DSROs with: (1) Daily reporting of the segregation and part 30 secured amount computations; and (2) semi-monthly reporting of the location of customer funds and how such funds are invested under § 1.25.[454]

The Commission has considered the comments and is adopting the amendments to §§ 1.32, 22.2(g), and 30.7(l) as proposed. In response to Jefferies comment, the Commission notes that the proposed and final regulation require an FCM to report all investments, including cash and other investments, regardless of where the investments are held.

In response to FIA's comment, the Commission does not believe that a full disclosure of the investment of customer funds would disclose proprietary information of the FCM. The Commission would require the disclose of investment information in a manner consistent with the current NFA disclosures, which includes, for each FCM, the percentage of the invested customer funds that are held by banks, or invested in U.S. government securities, bank certificates of deposit, money market funds, municipal securities, and U.S. government sponsored enterprise securities. The Commission, however, further believes that FCMs also should disclose the amount of customer funds that are held by clearing organizations and brokers. The Commission also believes that FCMs should disclose the amount of customer-owned securities that are on deposit as margin collateral, and information regarding repurchase

[448] Each FCM currently already submits a daily Segregation Schedule to its DSRO pursuant to rules of the CME and NFA. Therefore, the Commission's amendments are codifying current regulatory practices for each FCM.

[449] In fact, since FCMs file the Segregation Schedules with the CME and NFA via WinJammer, the Commission already has access to the filings, and the amendment will not require an FCM to change any of its operating procedures.

[450] Each Form 1–FR–FCM and FOCUS Report is received by the Commission via WinJammer. The financial forms are automatically electronically reviewed within several minutes of being received by the Commission and if a firm is undersegregated an alert is immediately issued to Commission staff members via an email notice.

[451] FIA Comment Letter at 30 (Feb. 15, 2013).

[452] *Id.* at 31.

[453] Jefferies Comment Letter at 4 (Feb. 15, 2013).

[454] MFA Comment Letter at 3 (Feb. 15, 2013).

transactions involving customer funds or securities. The additional disclosures will provide customers and the market with additional information that may be relevant to their assessment of the risks of placing their funds with a particular FCM. The Commission further notes that it plans to work with the SROs to determine the most efficient and effective method to disclose this information to the public.

The Commission also confirms that an FCM satisfies the requirement of § 1.32 if it prepares and submits to the Commission, and to its DSRO, a consolidated Segregation Schedule for each account class on a U.S. dollar-equivalent basis. The FCM, however, must prepare segregation records on a daily basis on a currency-by-currency basis to ensure compliance with § 1.49, which governs how FCMs may hold funds in foreign depositories. The FCM is not required under § 1.32 to file the currency-by-currency segregation records with the Commission or with its DSRO.

O. § 1.52: Self-regulatory Organization Adoption and Surveillance of Minimum Financial Requirements

SROs are required by the Act and Commission regulations to monitor their member FCMs for compliance with the Commission's and SROs' minimum financial and related reporting requirements. Specifically, DCM Core Principle 11 provides, in relevant part, that a board of trade shall establish and enforce rules providing for the financial integrity of any member FCM and the protection of customer funds.[455] In addition, section 17 of the Act requires NFA to establish minimum capital, segregation, and other financial requirements applicable to its member FCMs, and to audit and enforce compliance with such requirements.[456]

The Commission also has established in § 1.52 minimum elements that each SRO financial surveillance program must contain to satisfy the statutory objectives of Core Principle 11 and section 17 of the Act. In this regard, § 1.52 requires, in part, each SRO to adopt and to submit for Commission approval rules prescribing minimum financial and related reporting requirements for member FCMs. The rules of the SRO also must be the same as, or more stringent than, the Commission's requirements for financial statement reporting under § 1.10 and minimum net capital under § 1.17.

In addition, the Commission adopted final amendments to § 1.52 on May 10, 2012, to codify previously issued CFTC staff guidance regarding the minimum elements of an SRO financial surveillance program.[457] In order to effectively and efficiently allocate SRO resources over FCMs that are members of more than one SRO, § 1.52(c) currently permits two or more SROs to enter into an agreement to establish a joint audit plan for the purpose of assigning to one of the SROs (the DSRO) of the joint audit plan the function examining member FCMs for compliance with minimum capital and related financial reporting obligations. The audit plan must be submitted to the Commission for approval. Currently all active SROs are members of a joint audit plan that was approved by the Commission on March 18, 2009.[458]

The Commission proposed additional amendments to § 1.52 to enhance and strengthen the minimum requirements that SROs must abide by in conducting financial surveillance. As the Commission explained in the Proposal, these amendments are intended to minimize the chances that FCMs engage in unlawful activities that result, or could result, in the loss of customer funds or the inability of the firms to meet their financial obligations to market participants. Proposed § 1.52(a) added a definitions section identifying the terms ''examinations expert,'' ''material weakness,'' and ''generally accepted auditing standards.''

The term ''examinations expert'' was defined as a ''nationally recognized accounting and auditing firm with substantial expertise in audits of futures commission merchants, risk assessment and internal control reviews, and is an accounting and auditing firm that is acceptable to the Commission.'' The Commission received several comments regarding the opinion that the examinations expert is required to provide on its review of the SRO programs, which is addressed in section II.O.4 below. The Commission did not, however, receive comments regarding the defined term ''examinations expert'' and is adopting the definition as proposed.

The term ''material weakness'' was defined as ''as a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstating of the entity's financial statements and regulatory computations will not be prevented or detected on a timely basis by the entity's internal controls.'' The Commission has determined not to adopt the definition of material weakness to eliminate the concern that the SROs examinations are intended to replicate the financial statement audits performed by public accountants under § 1.16.

Proposed § 1.52(b) requires each SRO to adopt rules prescribing minimum financial and related reporting requirements, and requires its member FCMs to establish a risk management program that is at least as stringent as the risk management program required of FCMs under § 1.11. Proposed amendments to § 1.52 (c) requires each SRO to establish a supervisory program to oversee their member FCMs' compliance with SRO and Commission minimum capital and related reporting requirements, the obligation to properly segregated customer funds, risk management requirements, financial reporting requirements, and sales practices and other compliance requirements. The supervisory program must address: (1) Levels and independence of SRO examination staff; (2) ongoing surveillance of member FCMs; (3) procedures for identifying high-risk firms; (4) on-site examinations of member firms; and (5) the documentation of all aspects of the supervisory program. The supervisory program also must be based on an understanding of the internal control environment to determine the nature, timing, and extent of controls testing and substantive testing to be performed and must address all areas of risk to which the FCM can reasonably be foreseen to be subject. Proposed § 1.52(c) also requires that all aspects of the SRO's supervisory program must, at a minimum, conform to generally accepted auditing standards after consideration to the auditing standards issued by the PCAOB.

Proposed § 1.52(c) also requires each SRO to engage an ''examinations expert'' at least once every two years to evaluate the quality of the supervisory oversight program and the SRO's application of the supervisory program. The SRO must obtain a written report from the examinations expert with an opinion on whether the supervisory program is reasonably likely to identify a material weakness in internal controls over financial and/or regulatory reporting, and in any of the other areas

[455] 7 U.S.C. 7(d)(11).

[456] 7 U.S.C. 21(p).

[457] 77 FR 36611 (June 19, 2012).

[458] The original signatories of the joint audit plan approved on March 18, 2009 are as follows: Board of Trade of the City of Chicago, Inc.; Board of Trade of Kansas City; CBOE Futures Exchange, LLC; Chicago Climate Futures Exchange, LLC; Chicago Mercantile Exchange Inc.; Commodity Exchange, Inc.; ELX Futures, L.P.; HedgeStreet, Inc.; ICE Futures U.S., Inc.; INET Futures Exchange, L.L.C.; Minneapolis Grain Exchange; NASDAQ OMX Futures Exchange; National Futures Association; New York Mercantile Exchange, Inc.; NYSE Liffe US, L.L.C.; and One Chicago, L.L.C.

that are subject to the supervisory program.

Proposed § 1.52(d) provides that two or more SROs may enter into an agreement to delegate the responsibility of monitoring and examining an FCM that is a member of more than one SRO to a DSRO. The DSRO would monitor the FCM for compliance with the Commission's and SROs' minimum financial and related reporting requirements, and risk management requirements, including policies and procedures relating to the receipt, holding, investing and disbursement of customer funds.

The Commission received several comments on the proposed amendments to § 1.52 and, with the exception of the issues discussed below, has determined to adopt the amendments as proposed.[459]

1. Swap Execution Facilities Excluded From the Scope of Regulation 1.52

The Commission is revising the final § 1.52 by adding a new defined term, ''self-regulatory organization,'' to paragraph (a). The term ''self-regulatory organization'' is defined in paragraph (a) to mean, for purpose of § 1.52 only, a contract market, as defined in § 1.3(h), or a registered futures association. The term ''self-regulatory organization'' is further defined in paragraph (a) to explicitly exclude a swap execution facility (''SEF''), as defined in § 1.3(rrrr).

The revision to definition of self-regulatory organization in § 1.52 is necessary due to the recent amendments to the definition of ''self-regulatory organization'' set forth in § 1.3(ee), which defines the term as a contract market, as defined in § 1.3(h), a SEF, as defined in § 1.3(rrrr), or a registered futures association under section 17 of the Act.[460] Therefore, since § 1.52 applies to each SRO, without including a definition for the term ''self-regulatory organization'' under § 1.52(a) that excludes SEFs, the full provisions of § 1.52 would apply to SEFs.

In adopting new regulations implement core principles and other requirements for SEFs, the Commission did not require SEFs to adopt minimum capital and related financial reporting requirements for its member firms.[461] The Commission further stated that a SEF's obligation to monitor its member for financial soundness extended only to a requirement to ensure that the members continue to qualify as eligible contract participants as defined in section 1a(18) of the Act.[462] Therefore, the Commission previously has determined that the extensive oversight program required of SROs that are contract markets or registered futures associations by § 1.52 is not applicable to SEFs.

2. Revisions to the Current SRO Supervisory Program

The Commission received several comments concerning the proposed amendments to § 1.52, many of which varied in support and context. The NFA stated that it fully supports the requirement that the supervisory program include both controls testing and substantive testing, and that the examinations process be driven by the risk profile of the FCM.[463] NFA noted that it has been modifying its procedures to enhance its examination of FCM internal controls as well as substantive testing, and also has updated its risk system to create risk profiles of each of its FCMs.[464] NFA also agreed that SROs should identify those FCMs that pose a high degree of potential risk so that the SRO can increase its monitoring of those firms and that the examinations should focus on the higher risk areas at each FCM.[465]

The CME and JAC generally did not support the proposed amendments to § 1.52, stating that the current limited role of regulatory exams is appropriate as its purpose is not intended to give the same level of assurances to the FCM, the FCM's investors, or third parties as that which external auditors provide in conducting financial statement audits of FCMs.[466] The CME also stated that regulatory reviews are not designed to protect investors in FCMs, nor should they be.[467] In addition, the CME believes that SROs and DSROs play regulatory roles, and it is no more appropriate to have them report to an audit committee of an FCM than it would be to have the Commission itself report to that audit committee.[468]

The JAC stated that the SRO examinations are compliance reviews focused on the particular and distinctive regulatory requirements and associated risks of the futures industry, including whether FCMs are in compliance with customer regulations and net capital requirements to protect customers and the functioning of the futures industry.[469] The JAC further stated that incorporating the full risk management requirements of § 1.11 into the SRO's examinations of FCMs, and the requirement that the SRO audit program address all areas of risk to which FCMs can reasonably be foreseen to be subject, are overly broad requirements that are impractical, and virtually impossible to meet.[470]

The JAC further stated that proposed § 1.52 imposes potential duplicative oversight of FCM risk management policies and procedures by SROs and DCOs. The JAC noted that § 39.13(h)(5) requires a DCO to review the risk management policies, procedures, and practices of each of its clearing members.[471] The JAC requested clarification on the oversight responsibilities of SROs and DCOs to address potential duplicative requirements.[472] Lastly, the JAC stated that expanding the SRO oversight program to include operational and technical risks will require additional expertise, time and resources to perform such reviews and will result in increased costs.[473]

The Commission believes that the CME, NFA, JAC, SROs and DSROs play a critical role in examining FCMs and other registrants under the self-regulatory structure of the futures industry. Recent events, however, demonstrate that the SROs' current focus on CFTC and SRO regulatory requirements, including segregation and net capital computations, are not in and of themselves adequate to assess risk and protect customers of the FCM. For instance, a failure in an FCM's non-futures operations may pose risks to

[459] MGEX stated that the Commission's Proposal generally supports the current DSRO program by requiring FCMs to file various reports and notices with the Commission and with the firms' DSROs. MGEX further stated that the Commission should not create a regulatory monopoly and should recognize that an SRO may not wish to join the JAC. The Commission believes that each SRO has a right to elect to perform the financial surveillance required under § 1.52 directly or to participate in a joint audit agreement with other SROs. In addition, § 38.604 requires each SRO to have rules in place that require member FCMs to submit financial information to the SRO.

[460] 77 FR 66288 (Nov. 2, 2012). Regulation 1.3 is the general definitions provision of the Commission's regulations.

[461] 78 FR 33476 (June 4, 2013).

[462] *Id.*

[463] NFA Comment Letter at 3 (Feb. 15, 2013). *See also* Paul/Weiss Comment Letter at 2 (Feb. 15 2013), BlackRock Letter at 3 (Feb. 15. 2013), and MFA Comment Letter at 4 (Feb. 15, 2013) expressing general support for the proposed enhancements to the SRO examinations program.

[464] *Id.*

[465] *Id.*

[466] CME Comment Letter at 8–9 (Feb. 15, 2013); JAC Comment Letter at 2–4 (Feb. 14, 2013); JAC Comment Letter 2–4 (July 25, 2013).

[467] CME Comment Letter at 11 (Feb. 15, 2013).

[468] *Id.*

[469] JAC Comment Letter at 2 (July 25, 2013).

[470] *Id. See also* JAC Comment Letter at 5 (Feb. 14, 2013).

[471] *Id.*

[472] *Id.*

[473] *Id.* The JAC noted that the examination of the controls and risk management policies and procedures over an FCM's technology systems would require particular expertise that is different from the knowledge and expertise or regulatory staff, and that SROs will have to hire specialized examiners to conduct such reviews.

futures customers and the operation of an FCM. In addition, technology failures at an FCM also may pose risks to the operation of an FCM and the overall protection of customer funds. Accordingly, to properly monitor and assess risks to the FCM, the SRO must be aware of non-futures related activities of the FCM.

Recent events also demonstrate that the examinations of FCMs must be risk based and that the testing must be based on an understanding of the registrant's internal control environment to determine the nature, timing and extent of the necessary tests. In order to help ensure an appropriate risk based exam is performed, an examiner must take into account the risk profile of the firm and build the examination program accordingly. For example, if a firm has weak controls over cash, the risk of inaccurate accounting for cash movements is greater and therefore more detailed substantive testing of cash transactions and balances is necessary to provide the examiner with sufficient assurance that reported balances are accurate. To the contrary, if controls are good over cash then less substantive testing is needed.

The Commission acknowledges that revised § 1.52 imposes new obligations on SROs by requiring their supervisory programs to include an assessment of whether member FCMs comply with the risk management requirements of § 1.11. However, § 1.52 also requires that the SRO's examination of FCMs be performed on a risk-based approach. The scope of the examinations should be based upon the SRO's assessment of risk at the FCM and full, detailed testing is not mandated by § 1.52 in each area. Lastly, the Commission recognizes that DCOs impose certain risk management requirements on clearing FCMs and are required to review the operation of such risk management requirements. While § 39.13(h)(5) is directed at risk that an FCM may pose to a DCO and, therefore, is more narrowly focused than the risk management requirements in § 1.11, SROs may coordinate with a DCO to ensure that duplicative work is not being performed by the separate organizations.[474]

3. Auditing Standards Utilized in the SRO Supervisory Program

Proposed § 1.52(c)(2)(ii) and (d)(2)(ii)(F) require all aspects of an SRO's or DSRO's, supervisory program to conform, at a minimum, to U.S. GAAS after giving full consideration to the auditing standards issued by the PCAOB. NFA, CME, and JAC questioned what is meant by the term ''after giving full consideration of auditing standards prescribed by the PCAOB.'' [475] NFA, CME, and JAC did not agree with basing the SRO Supervisory Program framework on either U.S. GAAS or PCAOB standards, largely because the DSRO does not issue a report that expresses an opinion with respect to the FCM's financial statements or issue an Accountant's Report on Material Inadequacies.[476] Additionally, CME noted that invoking U.S. GAAS and PCAOB standards opens up a complex and detailed regulatory structure, which includes a framework allowing auditor's to rely on interpretive publications, professional journals and auditing publications from state CPA societies, none of which were designed to address the regulatory function played by an SRO or DSRO.[477] However, NFA acknowledged that certain U.S. GAAS and PCAOB accounting standards and practices should be followed by DSROs in performing their regulatory examinations (*e.g.,* those standards focusing on recordkeeping, training and experience, the scope of the examination and testing, the confirmation process, and other related examination practices).[478]

The Commission notes that the objective of the Proposal was to ensure that the SRO examinations are conducted consistent with the professional standards that CPAs and others are subject to in conducting their examinations. The Commission recognizes that certain U.S. GAAS principles and PCAOB principles would not be applicable to the SRO examinations (such as principles addressing reporting, which provide that the CPA must state whether the financial statements are prepared in accordance with Generally Accepted Accounting Principles). However, other U.S. GAAS and PCAOB standards would be relevant to SRO examinations. Such principles include standards addressing the competency and proficiency of the examinations staff and the obtaining and documenting of adequate audit evidence to support the examiner's conclusions.

The Commission has considered these comments and has revised the proposed language to state that at a minimum, an examination should conform to PCAOB auditing standards to the extent such standards address non-financial statement audits. While it is acknowledged that PCAOB audit standards are directed at financial statement audits, the concept of many of the standards are just as applicable to an examination performed by an SRO or DSRO, and as such should be adopted in that light. The relevant PCAOB standards would include, but are not limited to, the training and proficiency of the auditor, due professional care in the performance of the work, consideration of fraud in an audit, audit risk, consideration of materiality in planning and performing an audit, audit planning, identifying and assessing risks of material misstatement, the auditor's responses to the risk of material misstatement, audit documentation, evaluating the audit results, communications with audit committees, and due professional care in the performance of work. In developing the supervisory program, consideration should also be given to other related guidance such as the standards adopted by the Institute of Internal Auditors (Standards & Guidance—International Professional Practices Framework) and the Policy Statement and Supplemental Policy Statement on the Internal Audit Function and its Outsourcing issued by the Board of Governors of the Federal Reserve System, and generally accepted auditing standards issued by the American Institute of Certified Public Accountants.[479]

4. ''Examinations Expert'' Reports

Proposed § 1.52(c)(2)(iv) and (d)(2)(ii)(I) require each SRO and DSRO, respectively, to engage an examinations expert to evaluate the SROs or DSROs programs and to express an opinion as to whether the program is reasonably likely to identify a material deficiency in internal controls over financial and/or regulatory reporting and in any of the other areas that are subject to SRO or DSRO review under the programs. The JAC, CME, Center for Audit Quality, Ernst & Young, and PWC did not support the ''examinations expert'' requirement.[480] Several of these commenters expressed concern that the term ''examinations expert'' as defined

[474] Under the current JAC structure, the CME is the only entity that is both an SRO that performs periodic examinations of FCMs and a DCO that has responsibilities under § 39.13(h)(5) to perform risk management on clearing FCMs.

[475] NFA Comment Letter at 3 (Feb. 15, 2013); CME Comment Letter at 9–10 (Feb. 15, 2013); JAC Comment Letter at 2–3 (Feb 14, 2013).

[476] *Id.*

[477] CME Comment Letter at 9–10 (Feb. 15, 2013).

[478] NFA Comment Letter at 3–4 (Feb. 15, 2013).

[479] The Commission is revising final § 1.52 to remove from paragraph (a) a definition for the term ''U.S. Generally accepted auditing standards'' as that term is no longer contained in the final regulation.

[480] JAC Comment Letter at 3–4 (Feb. 14, 2013); Center for Audit Quality Comment Letter at 3 (Jan. 14, 2013); Ernst & Young Comment Letter at 3–4 (Jan. 14, 2013); PWC Comment Letter at 3 (Jan. 15, 2013).

by § 1.52 imposes a criterion that most CPA firms may not possess or would not be willing to issue such a report.[481] Moreover, NFA, JAC, and MGEX stated that requiring an ''examinations expert'' is unnecessary and duplicative of already existing Commission responsibilities, noting that the JAC provides the examination programs to the Commission annually, and that the Commission can perform a review of the examination programs.[482]

NFA and JAC suggested, as cost effective and more practical solution, inviting individuals meeting the ''examinations expert'' designation to participate in the already existing JAC audit committee meetings.[483] CME suggested that if the proposed structure is adopted, the time frame for review be extended from 18 months to 3½ years, matching that required by the AICPA in its Peer Review program.[484]

The Commission has taken these comments into consideration and has revised the final regulation by providing that the report of the examinations expert should conform to the consulting services standards of the AICPA. The Commission recognizes that generally accepted auditing standards do not provide a reporting framework by which a certified public accountant can issue an audit opinion consistent with the requirements contained in § 1.52. Accordingly, the Commission has revised the final regulation by removing the requirement that the examinations expert provide an audit opinion.

The Commission also does not believe that it is in a position to perform the type of review of the SRO examination reports required by § 1.52 given its limited resources. Furthermore, the examinations expert is an independent party with expert knowledge of risk assessment and internal controls reviews and will be able to provide more thorough and detailed review of the joint audit program than Commission staff can currently devote to such a review. In addition, the Commission staff has communicated to the JAC that it would be very supportive of having the accounting and auditing experts join the JAC meetings to discuss current industry issues.

The Commission has also considered the impact of performing such a review every two years and has modified the proposal to require such a report on a three year basis. This reflects the fact that the DSROs will be updating their programs as needed and therefore the program should not be stagnant during the intervening years. Finally, it was pointed out that given the nature of the report and to facilitate an open and frank dialogue amongst the examinations expert, the DSROs, and the Commission, such report should be considered confidential. The Commission is revising the regulation to provide that the report is confidential, which is consistent with how the PCAOB conducts its reviews of CPA firms.

P. § 1.55: Public Disclosures by Futures Commission Merchants

Regulation 1.55(a) currently requires an FCM, or an IB in the case of an introduced account, to provide a customer with a separate written risk disclosure statement prior to opening the customer's account (''Risk Disclosure Statement''). Regulation 1.55(a) also provides that the Risk Disclosure Statement may contain only the language set forth in § 1.55(c) (with an exception for non-substantive additions such as captions), except that the Commission may authorize the use of Risk Disclosure Statements approved by foreign regulatory agencies or self-regulatory organizations if the Commission determines that such Risk Disclosure Statements are reasonably calculated to provide the disclosures required by the Commission under § 1.55.[485] Regulation 1.55(a) further requires the FCM or IB to receive a signed and dated statement from the customer acknowledging his or her receipt and understanding of the Risk Disclosure Statement.[486]

The Commission reviewed the adequacy of the current prescribed Risk Disclosure Statement in light of its experience with customer protection issues during the recent failures of two FCMs, MFGI and PFGI. In this regard, in responding to questions and issues raised primarily by non-institutional market participants, including market participants from the agricultural community and retail market participants, the Commission recognized that such market participants would benefit from several additional disclosures regarding the potential general risks of engaging in futures trading through an FCM, and the potential specific risks resulting from the bankruptcy of an FCM. In addition to proposing new general risk disclosures, the Commission proposed to also require each FCM to provide customers and potential customers with information about the FCM, including its business, operations, risk profile, and affiliates. The firm specific disclosures are intended to provide customers with access to material information regarding an FCM to allow the customers to independently assess the risk of entrusting funds to the firm or to use the firm for the execution of orders.

1. Amendments to the Risk Disclosure Statement

The mandatory Risk Disclosure Statement currently addresses the risks of engaging in commodity futures trading. The risks that must be disclosed include: (1) The risks that a customer may experiences losses that exceed the amount of funds that he or she contributed to trading and that the customer may be responsible for losses beyond the amount of funds deposited for trading; (2) the risks that under certain market conditions, a customer may find it difficult or impossible to liquidate a position, such as when a market has reached a daily price move limit; (3) the risks that placing certain contingent orders (such as a stop limit order) may not necessarily limit the customer's losses; (4) the risks associated with the high degree of leverage that may be obtainable from the futures markets; and (5) the risks of trading on non-U.S. markets, which may not provide the same level of protections provided under Commission regulations.

As noted above, the Commission proposed several additional disclosures based upon its experience in working with customers, particularly retail and other non-institutional market participants, during the recent failures of MFGI and PFGI. Specifically, the Commission proposed to amend the Risk Disclosure Statement to provide market participants with more information regarding the risks associated with an FCM holding customer funds. In this regard, certain market participants believed that the fact that their funds were segregated from the FCM's proprietary funds protected them from loss in the event of

[481] CME Comment Letter at 13 (Feb. 15, 2013); Center for Audit Quality Comment Letter at 3 (Jan. 14, 2013); Ernst & Young Comment Letter at 3–4 (Jan. 14, 2013); PWC Comment Letter at 3 (Jan. 15, 2013).

[482] NFA Comment Letter at 4–5 (Feb. 15, 2013); JAC Comment Letter at 4 (Feb. 14, 2013) MGEX Comment Letter at 3–4 (Feb. 18, 2013).

[483] NFA Comment Letter at 4–5 (Feb. 15, 2013); JAC Comment Letter at 4 (Feb. 14, 2013).

[484] CME Comment Letter at 13 (Feb. 15, 2013).

[485] The Commission has previously approved an alternative ''generic'' risk disclosure statement for use in the United Kingdom, Ireland and the U.S.

[486] FCMs and IBs are permitted to open commodity futures accounts for ''institutional customers'' pursuant to § 1.55(f) without furnishing such institutional customers with a Risk Disclosure Statement or obtaining the written acknowledgment required by § 1.55. The term ''institutional customer'' is defined by § 1.3(g) and section 1a of the Act as an eligible contract participant. The Commission did not propose to amend § 1.55(f) to require FCMs or IBs to furnish institutional customers with Risk Disclosure Statements.

an FCM bankruptcy. Other customers believed that a DCO guaranteed customer losses, and other customers believed that funds deposited for futures trading were protected by the Securities Investor Protection Corporation in the event of an FCM/BD bankruptcy.

To provide greater clarity as to the how customer funds are held and the potential risks associated with FCMs holding customer funds, the Commission proposed to revise the Risk Disclosure Statement by amending § 1.55(b) to include new paragraphs (2) through (7) as follows:

(2) The funds you deposit with an FCM for trading futures positions are not protected by insurance in the event of the bankruptcy or insolvency of the futures commission merchant, or in the event your funds are misappropriated due to fraud;

(3) The funds you deposit with an FCM for trading futures positions are not protected by the Securities Investor Protection Corporation even if the futures commission merchant is registered with the SEC as a BD;

(4) The funds you deposit with an FCM are not guaranteed or insured by a DCO in the event of the bankruptcy or insolvency of the FCM, or if the FCM is otherwise unable to refund your funds;

(5) The funds you deposit with an FCM are not held by the FCM in a separate account for your individual benefit. FCMs commingle the funds received from customers in one or more accounts and you may be exposed to losses incurred by other customers if the FCM does not have sufficient capital to cover such other customers' trading losses;

(6) The funds you deposit with an FCM may be invested by the FCM in certain types of financial instruments that have been approved by the Commission for the purpose of such investments. Permitted investments are listed in Commission Regulation 1.25 and include: U.S. government securities; municipal securities; money market mutual funds; and certain corporate notes and bonds. The FCM may retain the interest and other earnings realized from its investment of customer funds. You should be familiar with the types of financial instruments that an FCM may invest customer funds in; and

(7) FCMs are permitted to deposit customer funds with affiliated entities, such as affiliated banks, securities brokers or dealers, or foreign brokers. You should inquire as to whether your FCM deposits funds with affiliates and assess whether such deposits by the FCM with its affiliates increases the risks to your funds.

The Commission received several comments on the proposed amendment to the Risk Disclosure Statement. NFA stated that it fully supported the Commission's goal of ensuring that customers receive a full description of the risk associated with futures trading, and agreed with the Commission that it is important to update the Risk Disclosure Statement to provide information on the extent to which customer funds are protected when deposited with an FCM as margin or to guarantee performance for trading commodity interest.[487]

The FIA generally supported the proposed amendments to the general Risk Disclosure Statement set forth in § 1.55(b) and outlined above.[488] The FIA stated that many of the Commission's proposed amendments are consistent with FIA's recommendations to enhance disclosures set forth in its paper, ''Initial Recommendations for the Protection of Customer Funds,'' which was published on February 28, 2012 (''Initial Recommendations'') in response to MFGI.[489] FIA also stated that its document, ''Protection of Customer Funds—Frequently Asked Questions,'' is being used by FCMs to provide customers with increased disclosures on the scope of how the laws and regulations protect customers in the futures market.[490]

With respect to the Commission's proposed amendments to § 1.55(b), FIA recommended that the Commission delete the phrase ''due to fraud'' in § 1.55 (b)(2) because customer funds may be misappropriated for any reason.[491] Additionally, FIA suggested the disclosure in § 1.55(b)(4) be revised to take account of the CME Group Family Farmer and Rancher Protection Fund established in the wake of MFGI as this fund will provide up to $25,000 to qualifying individual farmers and ranchers and $100,000 to co-ops that hedge their risk in CME futures markets.[492]

The Commission has considered FIA's comments and had determined to revise the proposal. The Commission recognizes that customer funds may be misappropriated as a result of wrongful conduct that does not rise to the level of fraud. Accordingly, the Commission is revising § 1.55(b)(4) by removing the phrase ''due to fraud'' so that the disclosure provides that customers' funds are not covered by insurance in the event of the insolvency of the FCM or in the event the funds are misappropriated.

The Commission also is revising final § 1.55(b)(4) in response to FIA's comment to provide an overall statement that customer funds generally are not insured by DCOs. The Commission is further revising final § 1.55(b)(4) to include in the disclosure the fact that a DCO may offer an insurance program, and that a customer should inquire of the FCM the extent of any DCO insurance programs and whether the customer would qualify for coverage and understand the limitations and benefits of the coverage. The Commission believes that this approach is more flexible to address future developments in this area than a direct reference to specific DCO insurance programs that currently are available.

NEFI/PMAA questioned whether or not existing and proposed disclosures are sufficient, and further stated that disclosure of customer protections are equally important as the disclosure of potential risks to ensure customer confidence.[493] Pilot Flying J stated FCMs must be required to disclose information to their customers on how their accounts and positions will be managed, as well as associated risks and what kinds of financial protections are afforded to customers by the firm, exchange, and the Commission.

The Commission agrees with NEFI/PMAA and Pilot Flying J that a customer's understanding of the protections is as important as understanding the risks. The Risk Disclosure Statement is the minimum information that an FCM should provide to prospective customers, and is intended to provide a high level summary of the general risk of trading commodity interests. FCMs should provide additional information as necessary to ensure that customers have adequate information. The Commission believes that FIA's Initial Recommendation and FAQ, which includes the types of information that NEFI/PMAA and Pilot Flying J are requesting, should be made available to all potential customers. FIA should revise the documents, as appropriate, in

[487] NFA Comment Letter at 15 (Feb. 15, 2013).

[488] FIA Comment Letter at 41 (Feb. 15, 2013).

[489] FIA Comment Letter at 2 (Feb. 15, 2013). The FIA formed a special committee to develop and recommend specific measures that could be implemented by both the industry best practices and regulatory change to address the issues arising from the bankruptcy of MFGI.

[490] *Id.* FIA's ''Protection of Customer Funds—Frequently Asked Questions'' provides information covering five broad areas: (1) segregation of customer funds; (2) collateral management and investments; (3) basic information on FCMs, such as the purpose of capital requirements and margin processing: (4) issues for joint FCM/BDs; and (5) the role of the DCO guarantee fund.

[491] *Id.* at 41.

[492] *Id.* at 41–42.

[493] NEFI/PMAA Comment Letter at 2 (Jan. 14, 2013).

response to changing market events or other factors.

The Commission also requested comment on whether and how the new or revised Risk Disclosure Statement should be provided to existing customers at the effective date of the regulation. Particularly, the Commission requested comment on whether FCMs should be required to obtain new signature acknowledgments from existing customers.

FIA stated that it was not opposed to a requirement that FCMs provide the revised Risk Disclosure Statement to existing customers that are otherwise required to receive the disclosure document.[494] FIA stated, however, that FCMs should not be required to obtain a written acknowledgment from existing customers. FIA further stated that it should be sufficient if the FCM makes each customer aware of the revised Risk Disclosure Statement by any appropriate means, consistent with the means by which the FCM normally communicates important information to customers, including but not limited to, a separate mailing.[495] The CFA stated that it is very important for FCMs and their DSROs to ascertain whether existing and potential customers have acknowledged receipt of the Risk Disclosure Statement, and FCMs should keep records of acknowledgments that the Risk Disclosure Statements were received.[496] NGFA noted that providing updated risk disclosure, with signed acknowledgment of such to the FCM, is a sound concept.[497]

Regulation 1.55(a) will continue to require FCMs to obtain and retain signed acknowledgments from new customers that they received and understand the Risk Disclosure Statement. With respect to existing FCM customers on the effective date of the regulation, the Commission believes that it is adequate for an FCM to provide each of the customers with a revised Risk Disclosure Statement via its normal means of communicating with customers, including the use of a separate mailing, or providing a link on the firm's Web site to the revised Risk Disclosure Statement, provided that the FCM provides a paper copy of the Risk Disclosure Statement upon the request of a customer. The communication of the revised Risk Disclosure Statement to customers must be highlighted by the FCM in such a manner to reasonably ensure that the customers are adequately apprised of the revised Risk Disclosure Statement.

FIA also noted that the Commission previously approved, pursuant to § 1.55(c), an alternative risk disclosure statement for use in the U.S., the United Kingdom, and Ireland.[498] The alternative risk disclosure statement is set forth in Appendix A to § 1.55. FIA requested that the Commission confirm whether FCMs may continue to use the alternative risk disclosure statement and further encouraged the Commission to coordinate with other derivatives regulatory authorities to revise the alternative risk disclosure statement to meet its regulatory objectives.[499]

Regulation 1.55(c) provides that the Commission may approve for use in lieu of the standard Risk Disclosure Statement required by § 1.55(b) a risk disclosure statement approved by one or more foreign regulatory agencies or self-regulatory organizations if the Commission determines that such risk disclosure statement is reasonably calculated to provide the disclosure required by the standard Risk Disclosure Statement. As noted above, the Commission proposed amendments to the Risk Disclosure Statement due to its recent experiences with the MFGI and PFGI insolvencies where certain customers, particularly less sophisticated customers, did not fully comprehend the nature of the protections of customer funds. Based upon this recent experience, the Commission does not believe that the disclosures in the alternative risk disclosure statement contained in Appendix A provide sufficient detailed disclosures to customers regarding the risk of trading futures transactions. Accordingly, the Commission is revising § 1.55(c) to provide that an FCM may continue to use the alternative risk disclosure statement provided that the FCM also provides each customer required to receive a disclosure document with the revised Risk Disclosure Statement and receives such customer's written acknowledgment that it has received and understands the Risk Disclosure Statement. This will allow FCMs to continue to have a common risk disclosure statement with the United Kingdom and Ireland, and also ensure that customers receive additional risk disclosures to enhance their understanding of engaging in futures trading.

a. Firm Specific Disclosure Document

i. General Requirements

The Commission proposed new paragraphs (i) and (k) to § 1.55 to provide that an FCM may not enter into a customer account agreement or accept funds from a customer unless the FCM discloses to the customer all information about the FCM, including its business, operations, risk profile, and affiliates, that would be material to the customer's decision to entrust such funds to such FCM and otherwise necessary for full and fair disclosure to customers (''Firm Specific Disclosure Document'').

The Firm Specific Disclosure Document is intended to enable customers to make informed judgments regarding the appropriateness of selecting an FCM by providing information for the meaningful comparisons of business models and risks across FCMs. Such information will greatly enhance the due diligence that a customer can conduct both prior to opening an account and on an ongoing basis, as the proposal will require the FCM to update the Firm Specific Disclosure Document at least once every 12 months and as and when necessary to keep it accurate and complete. The Commission believes that the proposed firm specific Firm Specific Disclosure Document, coupled with the existing Risk Disclosure Statement, will provide customers with a more complete perspective regarding the risks of participating in the futures markets and of opening an account with a particular firm.

Proposed § 1.55(j) requires an FCM to make the Firm Specific Disclosure Document available to customers and to the general public by posting the Firm Specific Disclosure Document on the FCM's Web site. An FCM may, however, use an alternative electronic means to provide the Firm Specific Disclosure document to its customers provided that the electronic version is presented in a format that is readily communicated to the customers. Paper copies of the Firm Specific Disclosure Document also must be available upon the request of a customer. The Commission also proposed that each FCM disclose certain financial information on its Web site to provide the public with additional information on the firm and the customer funds that it holds. The additional financial disclosures are set forth in § 1.55(o) and are discussed below.

SIFMA stated that the public disclosure requirements will help empower its members to choose safe and trustworthy FCMs, and that the

[494] FIA Comment Letter at 42–43 (Feb. 15, 2013).

[495] *Id.*

[496] CFA Comment Letter at 8 (Feb. 13, 2013).

[497] NGFA Comment Letter at 5 (Feb. 15, 2013).

[498] FIA Comment Letter at 43 (Feb. 15, 2013).

[499] *Id.*

disclosures will hold FCMs accountable to their customers, allowing the customers to conduct due diligence efficiently, actively monitor FCMs' financial condition and regulatory compliance, and make informed decisions when selecting and doing business with FCMs.[500] Vanguard expressed the view that the best protection for customers is their own due diligence, and that the proposed additional enhancements add significant, and much needed, protections and transparency.[501] The FHLB supported the proposal with respect to the publication of the Firm Specific Disclosure Document and strongly endorsed the requirement that the FCM update the document as circumstances warrant.[502]

FIA stated that it supports enhancing disclosures to customers regarding the FCM through which the customer may elect to trade.[503] FIA requested that the Commission confirm that an FCM that is part of a publicly-traded company, whether U.S. or non-U.S., or is otherwise required to prepare and to make public an annual report including information comparable to that required by the Firm Specific Disclosure Document under the proposed regulation, may comply with the regulation by making such annual report, and any amendments thereto, available on its Web site.[504] FIA noted that the Management Discussion and Analysis (''MD&A'') required under SEC rules (17 C.F.R. 229.303) requires publicly traded companies to discuss essentially the same topics required to be discussed under the Commission's proposal. FIA stated that the topics include business environment; critical accounting policies; use of estimates; results of operations; balance sheet and funding sources; off-balance sheet arrangements and contractual obligations; overview and structure of risk management; liquidity risk management; market risk management; credit risk management; operational risk management; recent accounting developments; and certain risk factors that may affect the company's business.[505] FIA estimated that approximately 90 percent of customer funds are held by FCMs that are also SEC registered or part of a bank holding company or publicly-traded company and believes this position is necessary to avoid customer confusion in certain circumstances and to assure that FCMs are not subject to duplicative and, perhaps conflicting, disclosure requirements.[506]

FIA further requested that the Commission confirm the level of detail required to be provided by privately-held FCM companies should be consistent with that provided in the annual reports of publicly-traded companies.[507] Additionally, FIA stated that privately-held companies would need a period of time to develop the required disclosures and requested that the Commission make the compliance date of the regulation no sooner than six months after the effective date of the regulation.[508]

The Commission has considered the comments and is adopting § 1.55(i) and (j) as proposed. In response to FIA's comments, the Commission confirms that beyond the requirements stated in § 1.55, the Commission is not mandating the form in which the required information is conveyed, provided it is responsive to the information requirements of § 1.55 and provides such information in a clear, concise, and understandable matter. Accordingly an FCM that is part of a publicly traded company, or is otherwise required to prepare and make public an annual report including information comparable to the information required by proposed § 1.55(k), may satisfy the disclosure requirements in § 1.55 by making an annual report, and any amendments thereto, available on its Web site; provided that such annual report provides the information required by § 1.55 in a manner that is clear, concise and understandable. The Commission is similarly confirming that a privately-held company may satisfy the requirements in § 1.55 by making an annual report, and any amendments thereto, available on its Web site; provided that such annual report provides the information required by § 1.55 in a manner that is clear, concise and understandable.

In assessing whether the annual report contains the necessary information required by § 1.55 in a clear, concise and understandable manner, the FCM must ensure that the disclosures specifically address the risks at the FCM and are not so general in nature that they reflect that the FCM's business may not be material to the public or private company for which the annual report is prepared. An FCM is not in compliance with § 1.55 if the annual report information does not disclose the information required by § 1.55 as it relates to the FCM. The objective of the disclosures is to provide prospective and existing customers of the FCM with material information that could have an impact on their decision to engage in a relationship with the FCM. If the annual report does not include information regarding the FCM, or such information is not clear concise and understandable, the FCM would have to enhance the disclosure by providing supplemental material or otherwise making the required disclosures available to customers and the public in a manner that is clear, concise and understandable. In addition, in order to provide customers with clear, concise and understandable disclosures, an FCM may be required to extract information from various sections of its annual report and provide such information in an easy to read format. If customers are required to search through detailed annual reports to locate the required § 1.55 disclosures, the FCM is not providing the information in a clear, concise and understandable manner.

ii. Specific Disclosure Information Required (by Rule Paragraph)

Proposed § 1.55(k)(1) requires an FCM to disclose contact information for the firm including the address of its principal place of business and its phone number. No comments were received on the proposed § 1.55(k)(1) and the Commission is adopting the amendments as proposed.

Proposed § 1.55(k)(2) requires an FCM to disclose the name and business addresses of the FCM's senior management, including business titles and background, areas of responsibility and nature of duties of each person. The FIA recommended the disclosure be limited to those individuals identified as principals on the NFA BASIC system.[509]

The term ''principal'' is defined in § 3.1 to mean, with respect to an FCM: (1) The proprietor and chief compliance officer if the FCM is organized as a sole proprietorship; (2) any general partner and chief compliance officer if the FCM is organized as a partnership; (3) any director, the president, chief executive officer, chief operating officer, chief financial officer, chief compliance officer, and any person in charge of a principal business unit, division or function subject to regulation by the Commission if the FCM is organized as

[500] SIFMA Comment Letter at 2 (Feb. 21, 2013).

[501] Vanguard Comment Letter at 4 (Feb. 2, 2013). *See also,* Prudential Comment Letter at 2 (Jun. 9, 2013) and Security Benefit Comment Letter at 2 (Jan. 11, 2013 supporting the additional disclosures proposed under § 1.55(i).

[502] FHLB Comment Letter at 10 (Feb. 15, 2013).

[503] FIA Comment Letter at 41 (Feb. 15, 2013).

[504] FIA Comment Letter at 43–44 (Feb. 15, 2013).

[505] *Id.*

[506] *Id.*

[507] *Id.* at 44.

[508] *Id.*

[509] FIA Comment Letter at 51 (Feb. 15, 2013).

a corporation; (4) any director, the president, chief executive officer, chief operating officer, chief financial officer, chief compliance officer, the manager, managing member or those members vested with the management authority for the entity, and any person in charge of a principal business unit, division or function subject to regulation by the Commission if the FCM is organized as a limited liability company or limited liability partnership; and (5) in addition, any person at the FCM occupying a similar status or performing similar functions as described above, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the entity's activities that are subject to regulation by the Commission.

The Commission agrees with FIA's comment and is revising the final regulation to require an FCM to disclose persons that are defined as ''principals'' of the FCM under § 3.1.

Proposed § 1.55(k)(3) requires an FCM to disclose the significant types of activities and product lines that the FCM engages in and the approximate percentage of assets and capital that are contributed to each type of business activity or product line. FIA recommended that an FCM be required to update the description in its annual report, only if it adds a new business activity or product line that requires higher minimum capital under applicable capital rules because the approximate percentage of the FCM's assets and capital used in each type of activity can change frequently.[510]

The Commission believes that FIA is defining the requirements of § 1.55(k)(3) too narrowly. The regulation is intended to provide the public with information concerning the major businesses activities that an FCM engages in to provide information regarding the benefits and risks of using such firm to conduct transactions in commodity interests. Minimum capital requirements are generally driven by regulated business, such a being registered as a BD. While such information is material to potential customers and is required to be disclosed under § 1.55(k)(3), the regulation also requires the disclosure of non-regulated business that a firm may engage in.

The Commission also recognizes that an FCM's assets and capital contributed to different business activities can change frequently, but such information may be material for the public in determining to entrust funds with the firm and to perform effective due diligence in monitoring the firm. Each FCM will need to assess the materiality of changes and use its judgment to determine whether the Firm Specific Disclosure Document should be revised. In addition, the Commission notes that § 1.55(i) requires that the Firm Specific Disclosure Document must be revised as and when necessary, but at least annually, to keep the information accurate and complete. The Commission has considered the comments and is adopting the amendments as proposed.

Proposed § 1.55(k)(4) requires an FCM to disclose its business on behalf of customers, including types of accounts, markets traded, international business, and clearinghouses and carrying brokers used, and its policies and procedures concerning the choice of bank depositories, custodians, and other counterparties. FIA requested the Commission confirm that: (1) The disclosure required under this paragraph is limited to the activities of the FCM in its capacity as such; (2) the term ''accounts'' means ''customers''; and (3) the term ''counterparties'' is limited to counterparties for § 1.25 investments.[511]

Regulation 1.55(k)(4) is intended to provide customers and the public with information regarding the FCM operating its FCM's business. Accordingly, the Commission confirms that the disclosures required under § 1.55(k)(4) are limited to the activities of the FCM acting in its capacity as an FCM. The term ''types of accounts'' in § 1.55(k)(4) should be ''types of customers,'' and requires the FCM to disclose the nature of its customer base in the futures markets (*i.e.,* institutional, retail, agricultural, hedgers,) to provide the public with information regarding the firm's experiences with different types of markets and market participants. The Commission also confirms that the term ''counterparties'' is limited to § 1.25 counterparties. The Commission is revising final § 1.55(k)(4) accordingly.

Proposed § 1.55(k)(5) requires an FCM to discuss the material risks, accompanied by an explanation of how such risks may be material to its customers, of entrusting funds to the FCM, including, without limitation, the nature of investments made by the FCM (including credit quality, weighted average maturity, and weighted average coupon); the FCM's creditworthiness, leverage, capital, liquidity, principal liabilities, balance sheet leverage and other lines of business; risks to the FCM created by its affiliates and their activities, including investment of customer funds in an affiliated entity; and any significant liabilities, contingent or otherwise, and material commitments.

FIA commented that the word ''risks'' in § 1.55(k)(5) should be replaced with the word ''information,'' and that the Commission remove the phrase ''accompanied by an explanation of how such risks may be material to its customers.'' [512] FIA believed it sufficient that an FCM present the required information to the customer and that it is the customer's responsibility to analyze this information and determine the extent to which it is important or relevant to the customer's decision to open or maintain an account with the FCM.[513] FIA further stated that if the Commission believes FCMs should provide guidance to customers regarding the potential importance of specific information, FIA believes this guidance should be provided by means of a generic statement.[514] In addition, FIA asked the Commission to confirm that the term ''investments'' is limited to investments of customer funds, and does not include all investments made by the FCM as an entity.[515] Additionally, FIA requested that the Commission delete the term ''creditworthiness,'' stating that such reference is incongruous with instructions under section 939A of the Dodd-Frank Act.[516] Moreover, FIA opined that the only lines of business that an FCM should be required to disclose are those that would require higher minimum capital under applicable capital rules, and that this information should only be required to be updated annually.[517] Additional clarification was requested by FIA regarding the phrase ''investment of customer funds with an affiliated entity,'' and whether that phrase refers to the ''deposit of customer funds in an affiliated bank.'' [518] Further clarification was requested regarding the types of liabilities and commitments requiring disclosure under this section and whether this information should updated no more often than semiannually, consistent with comparable disclosures applicable to

[510] *Id.* at 45.

[511] *Id.* at 47–48.

[512] FIA Comment Letter at 45 (Feb. 15, 2013).

[513] *Id.*

[514] *Id.*

[515] *Id.*

[516] Section 939A required that the Commission, ''remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of creditworthiness as each respective agency shall determine as appropriate for such regulations.'' FIA Comment Letter at 46 (Feb. 15, 2013).

[517] FIA Comment Letter at 46 (Feb. 15, 2013).

[518] *Id.* at 51.

BDs.[519] Finally, FIA, while not opposed to providing leverage information, believed that disclosure should not be required until it is certain the calculation provides the most appropriate measure of risk.[520]

The Commission believes that it is appropriate that § 1.55(k)(5) requires an FCM to identify material risks and to explain how such risks may be material to customers. The Commission further believes, based upon its experiences during MFGI, that customers (particularly retail and less sophisticated customers) would benefit from an FCM providing its assessment of the risks of the firm, accompanied by an explanation of such risks.

The Commission notes, in response to FIA's comments, that § 1.55(k)(5) requires an FCM to provide information regarding its general investments and is not limited to the investment of customer funds. The disclosures contemplated by § 1.55(k)(5) go to the full operation of the FCM and not just its regulated or futures activities. In addition, limiting the disclosures only to investments that result in an increase in minimum capital requirements may result in the non-disclosure of significant operations that may impact a customer's decision to do business with an FCM.

The Commission also notes that the requirement in § 1.55(k)(5) for FCMs to disclose leverage information would be met by an FCM providing the leverage information that each FCM is required to calculate under § 1.10 and in accordance with the regulations of the NFA. An FCM should define the leverage calculation in the Disclosure Document and may provide any other information necessary to make the information meaningful for the public, but if materially different from the then prevailing NFA methodology, should provide an explanation of the differences therefrom.

Proposed § 1.55(k)(6) requires an FCM to disclose the name of its DSRO and the DSRO's Web site, and the location of where the FCM's annual financial statements are available. The Commission received no comments on proposed § 1.55(k)(6) and is adopting the regulation as proposed.

Proposed § 1.55(k)(7) requires an FCM to disclose any material administrative, civil, enforcement, or criminal action then pending, and any enforcement actions taken in the last three years. FIA requested that the Commission confirm that a ''pending'' action is an action that has been filed but not concluded, and recommended the Commission confirm that the disclosure required under this paragraph would be limited to matters required to be disclosed in accordance with § 4.24(l)(2).[521]

The Commission agrees with FIA that the regulation should require an FCM to disclose administrative, civil, enforcement, and criminal actions that have been filed but not concluded. The proposal was not intended to cover open or closed investigations that have not resulted in the filing of a complaint. The Commission is revising § 1.55(k)(7) as appropriate to reflect this concept.

The Commission, however, does not agree with FIA's comment that disclosures under proposed § 1.55(k)(7) should be limited to administrative, civil, enforcement, or criminal matters that would be required to be disclosed under § 4.24(l)(2). Regulation 4.24(l)(2) provides that an action will be deemed material if: (1) The action would be required to be disclosed in the footnotes to a commodity pool's financial statements under generally accepted accounting principles as adopted in the U.S.; (2) the action was brought by the Commission, provided that if the matter was concluded and did not result in a civil monetary penalty in excess of $50,000, it does not need to be disclosed; and (3) the action was brought by any other federal or state regulatory agency, a non-U.S. regulatory agency, or an SRO and involved allegations of fraud or other willful misconduct. The Commission believes that the regulation's requirement to disclose material actions is appropriate in the context of disclosures so that a customer can perform adequate due diligence to assess the risk of engaging an FCM to conduct futures business and in entrusting funds to the FCM. In this regard, the Commission believes that FCMs should disclose Commission disciplinary actions that are pending or have been concluded against the FCM without regard to the amount of the civil monetary penalty that may have been imposed. In addition, the Commission believes that there may be circumstances in addition to fraud or other willful misconduct that should be disclosed to customers to allow customers to better appreciate the potential risks of entering into a business relationship with an FCM.

Proposed § 1.55(k)(8) requires the Firm Specific Disclosure Document to contain a basic overview of customer fund segregation, collateral management and investments, FCMs, and dual registrant FCM/BDs. The disclosures included under § 1.55(k)(8) should not only include information regarding the segregation of funds for trading on designated contract markets, but should also include information regarding the risk to customers of engaging in foreign futures and foreign options trading. In conjunction with § 1.55(k)(4), which requires an FCM to provide a profile of its customer business, including its international business and clearinghouses and carrying brokers used, an FCM in order to comply with § 1.55(k)(8) should disclose the risks of engaging in trading on foreign markets. The disclosures required by § 1.55(k)(8) should include information that in the event of the insolvency of the FCM, or the insolvency of a foreign broker or foreign depository that is holding customer funds, customer funds held in foreign jurisdictions may be subject to a different bankruptcy regime and legal system than if the funds were held in the U.S. In addition, an FCM should disclose that a customer also is subject to fellow customer risk in foreign jurisdictions and that, for purposes of bankruptcy protection, a customer that trades only in one country or in one market is also exposed to fellow customer risk from losses that may be incurred in other countries and other markets. The Commission did not receive comment on § 1.55(k)(8) and is adopting the amendments as proposed.

Proposed § 1.55(k)(9) requires the FCM to include in the Firm Specific Disclosure Document information on how a customer may obtain information regarding filing a complaint with the Commission or the firm's DSRO. The Commission did not receive comment on § 1.55(k)(9) and is adopting the amendments as proposed.

Proposed § 1.55(k)(10) requires the Firm Specific Disclosure Document to include the following financial information for the most recent month end: (1) The FCM's total equity, regulatory capital, and net worth, all computed in accordance with U.S. Generally Accepted Accounting Principles and the Commission's capital rule, § 1.17; (2) the dollar value of the FCM's proprietary margin requirements as a percentage of the aggregated margin requirements for futures customers, Cleared Swaps Customers, and 30.7 customers; (3) the number of futures customers, Cleared Swaps Customers, and 30.7 customers that comprise 50 percent of the funds held for such customers, respectively; (4) the aggregate notional value, by asset class, of all non-hedged, principal over-the-counter transactions into which the

[519] *Id.* at 46.

[520] *Id.* at 34.

[521] Regulation 4.24(l)(2) requires a CPO to disclose in a disclosure document for a commodity pool certain material administrative, civil, or criminal actions against an FCM that the CPO engages to trade futures.

FCM has entered; (5) the amount, generic source and purpose of any unsecured lines of credit or similar short term funding the FCM has obtained but not yet drawn upon; (6) the aggregated amount of financing the FCM provides for customer transactions involving illiquid financial products for which it is difficult to obtain timely and accurate prices; and (7) the percentages of futures customers, Cleared Swaps Customers, and 30.7 customers receivable balances that the FCM had to write-off as uncollectable during the past 12 months, as compared to the current balance held for such customers.

CMC generally supported proposed § 1.55(k)(10), as it would enhance transparency to the public.[522] NFA provided a general comment supporting the Commission's objective of providing customers with meaningful information, but expressed concern that much of the information proposed to be disclosed under § 1.55(k)(10) may not be understandable to smaller and less sophisticated customers.[523] NFA specifically questioned whether such customers would comprehend: (1) The dollar value of the FCM's proprietary margin requirements as a percentage of the aggregate margin requirements for futures customers, Cleared Swaps Customers, and 30.7 customers; (2) the number of futures customers, Cleared Swaps Customers, and 30.7 customers that comprise 50 percent of the funds held for such customers, respectively; (3) the aggregate notional value, by asset class, of all non-hedged, principal over-the-counter transactions into which the FCM has entered; (4) the amount, generic source and purpose of any unsecured lines of credit or similar short term funding the FCM has obtained but not yet drawn upon; (5) the aggregate amount of financing the FCM provides for customer transactions involving illiquid financial products for which it is difficult to obtain timely and accurate prices; and (6) the percentages of futures customers, Cleared Swaps Customers, and 30.7 customers receivable balances that the FCM had to write-off as uncollectable during the past 12 months, as compared to the current balance held for such customers.[524] NFA noted that as one of its responses to MFGI, its Board of Directors formed a special committee on the protection of customer funds (''Special Committee'') that was comprised of NFA's public directors.[525] NFA stated that the Special Committee spent a significant amount of time reviewing information that FCMs should make available to customers, while focusing on the needs of smaller, less sophisticated customers, and concluded that much of the information in § 1.55(k)(10) is complicated and not meaningful for less sophisticated customers.[526] NFA also noted that more sophisticated institutional customers could request and would likely receive this information directly from an FCM.[527]

The Commission understands that not all customers would have the same use for the detailed information required by § 1.55(k)(10). In developing the proposal, the Commission sought to balance the information needs of all types of customers and their respective levels of sophistication. While certain customers may not use the full amount of information in assessing risks, the Commission anticipates that other customers will incorporate all or most of the information into their risk management process and will benefit from the disclosures in performing their due diligence. The Commission also believes that the information should be available to all customers without the need for customers to specifically request the § 1.55(k)(10) disclosures from the FCM.

FIA agrees that customers should be advised whether an FCM engages in proprietary futures trading but does not believe that FCMs should be required to disclose the dollar value of their proprietary margin requirements as a percentage of customer margin requirements as proposed in § 1.55(k)(10(ii) as such percentages will change frequently.[528] FIA also questions the implication that customers may be at greater risk if an FCM carries proprietary futures positions noting, for instances, that the FCM's funds to margin its proprietary positions would be available to cover a potential customer default.[529] RJ Obrien, however, noted that it is important that customers be aware of the nature and extent of a firm's proprietary trading.[530]

The Commission believes that information regarding an FCM's proprietary trading is necessary for customers to appropriately assess the risks of entrusting their funds to an FCM. The risk profile of an FCM is certainly different if it acts primarily as an agent in handling customer funds, or if it acts as agent for customers and also engages in proprietary trading. The Commission further believes that customers would benefit from some measure of the FCM's proprietary trading rather than a simple statement that the firm does or does not engage in proprietary trading. The dollar value of the FCM's margin requirements for its proprietary trading listed as a percentage of its customer margin requirements provides a means of measuring how active and extensive a firm's proprietary trading may be relative to its customer business, which will factor into the public's risk profile of the firm.

FIA requested confirmation that the requirement in § 1.55(k)(10)(iii) for an FCM to disclose the number of futures customers, cleared swap customers, and 30.7 customers that comprise 50 percent of the FCM's total funds held for such customers, respectively, should be based upon the smallest number of customers that comprise the 50 percent threshold.[531] The Commission confirms that FIA's assumption is correct and is revising the final regulation accordingly. A purpose of the disclosure is to provide information on the extent to which a firm may have customers with large positions relative to the FCM's general customer base.

FIA stated that the requirement in § 1.55(k)(10)(iv) for an FCM to disclose the aggregate notional value, by asset class, of its non-hedged, principal over-the-counter transactions would require the FCM to disclose proprietary information. In addition, FIA stated that providing such information is not practical as firms generally do not manage their books this way and the categorization of a swap transaction as being hedged or not hedged would change each day.

The objective of § 1.55(k)(10)(iv) is for an FCM to disclose the extent of the risk it is exposed to from over-the-counter transactions that are not hedged or for which the FCM does not hold margin from the counterparty sufficient to cover the exposure. While the Commission recognizes that such information may change frequently, § 1.55 only requires an FCM to update the information on an annual basis, or more frequently if the changes are material. The information also is in the aggregate, which should minimize the risk of disclosing detailed proprietary information. After considering the comments, the Commission is adopting the regulation as proposed.

FIA stated that the Commission should distinguish between committed

[522] CMC Comment Letter at 2 (Feb. 15, 2013).

[523] NFA Comment Letter at 15–16 (Feb. 15, 2013).

[524] *Id.*

[525] *Id.* at 1.

[526] *Id.* at 16.

[527] *Id.*

[528] FIA Comment Letter at 48 (Feb. 15, 2013).

[529] *Id.*

[530] RJ O'Brien Comment Letter at 11 (Feb. 15, 2013).

[531] FIA Comment Letter at 46–47 (Feb. 15, 2013).

and uncommitted lines of credit in the requirement in § 1.55(k)(10)(v), which requires an FCM to disclose the amount, generic source and purpose of any unsecured lines of credit it has obtained but not yet drawn upon.[532] The Commission agrees that it would be more appropriate to disclose committed lines of credit and to exclude lines of credit that could be withdrawn by the potential lender. The Commission is revising the final regulation to reflect this change. In addition, the Commission is clarifying that the provision in § 1.55(k)(10)(v) that requires the disclosure of the amount, source and purpose of any unsecured lines of credit or similar short-term funding would include secured and unsecured short-term funding.

Regulation 1.55(k)(10)(vi) requires an FCM to disclose the aggregated amount of financing the FCM provides for customer transactions involving illiquid financial products for which it is difficult to obtain timely and accurate prices. FIA requested that the Commission define the type of financing covered by the regulation, and also requested that the Commission define the term ''illiquid financial products'' and confirm whether the information should include secured as well as unsecured financing.[533]

The Commission notes that the purpose of the disclosure is to provide the public with information regarding the possible extent of exposures an FCM may have if customers failed to meet their financial obligations to the FCM. The Commission is adopting the requirement as proposed. FCMs are required to provide the necessary information in the Disclosure Document, and may explain the factors it uses to determine if a financial product is liquid or illiquid and the extent to which transactions are secured or unsecured.

Regulation 1.55(k)(10)(vii) requires an FCM to disclose the percentage of futures customer, Cleared Swaps Customer, and 30.7 customer receivable balances that the FCM had to write-off as uncollectable during the past 12 months, as compared to the current balances of funds held for such customers.

Newedge and RJ O'Brien commented that providing this information would provide customers with valuable insight into the strength of an FCM's credit policies, which benefits all customers.[534] FIA, however, commented that it did not recognize the relevance of the requested information, which may be misleading without the proper context (such as whether the losses were caused by one or two large customers or an aggregate of small customers).[535] FIA further stated that if the Commission were to adopt the rule, normal business write-offs should be excluded, and the Commission should establish a *de minimis* threshold were reporting would not be required.

The Commission has considered the comments and is adopting the regulation as proposed. The Commission believes that the disclosure of the amount of write-offs an FCM had to incur as a result of customers failing to pay receivable balances will provide information regarding the credit policies of the FCM. The Commission does not believe that there should be any *de minimis* level or threshold amount before the disclosure of the information becomes a requirement. In response to FIA's comments that the information may be misleading if not provided in context, the Commission notes that FCMs may include explanatory text in the Disclosure Document provided such information is not misleading.

Finally, proposed § 1.55(k)(11) requires a summary of the FCM's current risk practices, controls and procedures. FIA asked for confirmation that the discussion of the FCM's current risk practices, controls and procedures may be general in nature, noting that the Commission has recognized that an FCM's risk practices, controls and procedures may include proprietary information.[536] The Commission confirms that the discussion of the current risk practices, controls and procedures may be general in nature so that it does not disclose confidential proprietary information.

2. Public Availability of FCM Financial Information

Proposed § 1.55(o) requires each FCM to make the following information available to the public on its Web site: (1) The daily Segregation Schedule, Secured Amount Schedule, and the Cleared Swaps Segregation Schedule for the most current 12-month period; (2) a summary schedule of the FCM's adjusted net capital, net capital, and excess net capital, all computed in accordance with § 1.17 and reflecting balances as of the month-end for the 12 most recent months; and, (3) the Statement of Financial Condition, the Segregation Schedule, Secured Amount Schedule, and Cleared Swaps Segregation Schedule and all related footnotes contained in the FCM's most recent certified annual financial report. Regulation 1.55(o) also requires each FCM to include a statement on its Web site that additional financial information on the firm and other FCMs may be obtained from the NFA and the Commission, and to include hyperlinks to the NFA and Commission Web sites.

MFA, SIFMA, Prudential, Security Benefit, CoBank, and the FHLBs supported the requirement for FCMs to post their daily Segregation Schedule, Secured Amount Schedule, and Cleared Swaps Segregation Schedule on their Web site each day, stating that the disclosure of such information would place customers in a better position to assess an FCM's stability, and if customers identify concerns and deem appropriate, to transfer their positions and funds to a different FCM.[537] MFA, SIFMA, Prudential, Security Benefit, CoBank, and the FHLBs also stated that the Commission should require FCMs to disclose additional information, including the FCM's monthly Segregation Schedule, Secured Amount Schedule, and Cleared Swaps Segregation Schedule, and monthly summary balance sheet and income statement information, for the most recent 12-month period.[538] MFA noted that each FCM's monthly Segregation Schedule, Secured Amount Schedule, and Cleared Swaps Segregation Schedule are publicly available under § 1.10, and suggested that each FCM should be required to disclose the schedules to the public without the public having to request such statements from the firms as is currently required under § 1.10.[539]

The ACLI encouraged the Commission to make public as much information as possible regarding FCMs' financial condition, treatment of customer funds, and regulatory compliance.[540] The ACLI also noted that access to these categories of information should be straightforward and simple.[541] TIAA–CREF supported the proposed enhanced financial disclosures and encouraged the Commission to require the prompt public disclosure of relevant FCM

[532] *Id.*

[533] *Id.*

[534] Newedge Comment Letter at 4 (Feb. 15, 2013); RJ O'Brien Comment Letter at 11 (Feb. 15, 2013).

[535] FIA Comment Letter at 50 (Feb. 15, 2013).

[536] FIA Comment Letter at 50 (Feb. 15, 2013).

[537] MFA Comment Letter at 4 (Feb. 15, 2013); SIFMA Comment Letter at 2 (Feb. 21, 2013); Prudential Comment Letter at 2 (Jun. 9, 2013); Security Benefit Comment Letter at 2 (Jan. 11, 2013); CoBank Comment Letter at 2 (Jan. 14, 2013); FHLB Comment Letter at 7 (Feb. 15, 2013).

[538] *Id. See also* The Commercial Energy Working Group Comment Letter at 2–3 (Feb. 12, 2013).

[539] MFA Comment Letter at 4–6 (Feb. 15, 2013); SIFMA Comment Letter at 2 (Feb. 21, 2013).

[540] ACLI Comment Letter at 2–3 (Feb. 15, 2013).

[541] *Id.*

information.[542] TIAA–CREF stated that such disclosures would be a positive step towards ensuring a level playing field between each FCM and its customers and among FCMs themselves, and supported the Commission's efforts to require FCMs to disclose information regarding the FCM's segregation of customer property (*e.g.,* the Cleared Swaps Segregation Schedule), financial health and creditworthiness and would also support efforts by the Commission to cause such disclosures to be posted on the relevant FCM's Web site, in lieu of requiring customers to make a request to the Commission to receive such information (which may be administratively burdensome).[543]

FXCM noted that currently the Commission's monthly ''net capital'' reports is the only publicly available way to determine how much money an FCM or RFED has set aside for net capital, but this provides very little insight into how the firm is doing financially.[544] FXCM stated that FCMs and RFEDs should be required to publish quarterly consolidated balance sheets and income statements, including holding company financials, for the trading public so they will know the level of risk involved in dealing with a firm.[545]

FIA stated that the daily segregation, secured amount, and cleared swaps customer account calculations should not be made publicly available. FIA noted that NFA currently makes this information available on its Web site as of the 15th and last business day of each month and believes disclosure twice each month should be sufficient. If the Commission concludes more frequent disclosure is necessary, FIA recommended that disclosure should be required no more often than weekly, *i.e.,* as of the close of business each Friday (or the last business day of the week if Friday is a holiday).

Phillip Futures Inc. proposed that the Commission limit the financial data made public to that which is most appropriate for the average customer to make an educated decision regarding his choice of broker.[546] It further stated that rather than making the financial information public, it should only be provided to customers at their request.[547]

RCG stated that if the Commission makes the Segregation Schedule, Secured Amount Schedule, and Cleared Swaps Segregation Schedule public, the public will only see a targeted residual interest amount, without realizing and comprehending the many factors that have impacted a particular firm's determination of its target.[548]

TD Ameritrade expressed its concern regarding the public disclosure of the firm's targeted residual interest computation.[549] TD Ameritrade stated that the public would not be privy to any of the internal discussions and analysis that goes into the development and setting of the firm's targeted residual interest, and that any changes to its target could cause market upheaval, volatility, and unintended consequences.[550]

The Commission has considered the comments and is adopting the regulations as proposed, with the revision to § 1.55(o) to require each FCM to disclose on its Web site its monthly Segregation Schedule, Secured Amount Schedule, and Cleared Swaps Segregation Schedule for the 12 most recent month-end dates.

The Commission currently discloses FCM financial data on its Web site. Specifically, § 1.10(g) provides that the Form 1–FR–FCM (or FOCUS Report) is exempt from mandatory public disclosure under the Freedom of Information Act and the Government in the Sunshine Act, except for the following information: (1) The amount of the FCM's adjusted net capital under § 1.17 as of the reporting date, the amount of adjusted net capital maintained by the firm on the reporting date, and the amount of excess net capital on the reporting date; (2) the Segregation Schedule and Secured Amount Schedule as of the reporting date; and (3) the Statement of Financial Condition in the certified annual report and related footnote disclosures. The Commission summarizes the FCM's segregation, secured amount and capital information each month and makes such information available to the public on its Web site.

The Commission believes that customers should have access to sufficient financial information for each FCM to allow such customers to adequately assess and monitor the financial condition of firms. The disclosure of the daily segregation and secured amount computations will provide customers with additional information to assess the adequacy of an FCM's targeted residual interest given the firm's business operations and amount of customer funds held in segregated or secured accounts. The Commission also believes that the expanded disclosures required under § 1.55 offer each FCM with the ability to provide an explanation describing the rationale and business justification for its computation of the target residual interest to better inform the public. The reporting of segregated and secured account balances on a daily basis also will provide customers with information regarding any trends developing with particular reported balances that the customers may wish to consider as part of their risk assessment of the FCMs.

The Commission further believes that customers should have access to an FCM's financial information by reviewing such information directly on the FCM's Web site as part of the Firm Specific Disclosures. By reviewing the Firm Specific Disclosures and having access to financial data of the FCM, customers will be able to better assess the risks of engaging a particular FCM. The Commission also believes that customers would benefit from being informed that additional financial information on each FCM is available from the NFA and Commission, and by requiring the FCMs to maintain a hyperlink to the Commission's and NFA's Web sites. NFA and Commission data provide historical information that allows customers to assess financial trends on a customer-by-customer basis, and provides sufficient financial information such that customers can compare financial data across FCMs as part of their risk management program. The NFA also discloses additional information regarding how FCMs are holding customer funds and investing customer funds under § 1.25, which is material information for customers in assessing risk at particular FCMs.

Regulation 1.10(g) currently requires a customer to request from the FCM monthly Segregation Schedules and Secured Amount Schedules, as well as the Statement of Financial Condition contained in the FCM's certified annual report. In response to several of the comments, the Commission is revising § 1.55(o) to require each FCM to post such financial information on its Web site. The Commission agrees with the commenters that FCMs should disclose this information, which is currently

[542] ACLI Comment Letter at 2–3 (Feb. 15, 2013).

[543] TIAA–CREF Comment Letter at 2–3 (Feb. 15, 2013).

[544] FXCM Comment Letter at 2–3 (Dec. 14, 2013).

[545] *Id. See also* forex form letter group: Michael Krall; David Kennedy; Robert Smith; Michael Carmichael; Andrew Jackson; Donald Blais; Suzanne Slade; Patricia Horter; JoDan Traders; Jeff Schlink; Sam Jelovich; Matthew Bauman; Mark Phillips; Deborah Stone; Po Huang; Aaryn Krall; Vael Asset Management; Kos Capital; James Lowe; Tracy Burns; Treasure Island Coins; Clare Colreavy, Brandon Shoemaker.

[546] Phillip Futures Inc. Comment Letter at 3 (Feb. 14, 2013).

[547] *Id.*

[548] RCG Comment Letter at 6 (Feb. 12, 2013).

[549] TD Ameritrade Comment Letter at 4 (Feb. 15, 2013).

[550] *Id.*

publicly available under § 1.10(g), without requiring each customer or member of the public having to specifically request such information from the FCM.

The Commission is not expanding the required disclosures to include summary income statement information or balance sheet information as requested by several commenters. As noted above, § 1.10(g) currently provides that the Form 1–FR–FCM and FOCUS Reports are not subject to mandatory public disclosure under the Freedom of Information Act or the Government in the Sunshine Act, and the Commission did not propose to amend § 1.10(g) in the Proposal. In addition, the comments addressing quarterly financial statements and consolidated financial statements for FCMs and RFEDs are beyond the scope of the Proposal as the Commission did not propose to amend the regulations to require an FCM or RFED to prepare or file with the Commission quarterly financial statements on either an individual or consolidated basis. Accordingly, the Commission is not revising final § 1.55(o) to require such disclosures.

Q. Part 22—Cleared Swaps

As discussed above, the Commission adopted final regulations in part 22 that implement certain provisions of the Dodd Frank Act and impose requirements on FCMs and DCOs regarding the treatment of Cleared Swaps Customer contracts (and related collateral).[551] Although substantive differences in the segregation regimes between futures and cleared swaps exist at the clearing level under the final part 22 regulations, requirements with respect to collateral which is not posted to clearinghouses and maintained by FCMs for Cleared Swaps Customers replicate or incorporate by reference many of the same regulatory requirements applicable to the segregation of futures customer funds under section 4d(a)(2) of the Act and Commission regulations (for example, holding funds separate and apart from proprietary funds, limitations on the FCM's use of customer funds, titling of depository accounts, Acknowledgment Letter from depository requirements, and limitations on investment of swap customers' funds, are currently contained in both part 1 and part 22 regulations).

The determination that appropriate enhancements are necessary with respect to the regulatory requirements discussed above for segregated futures customer funds under section 4d(a)(2) of the Act is equally applicable to Cleared Swaps Customer Collateral. In this regard, the risk management program that each FCM that holds customer funds is required to implement under § 1.11 encompasses the firm's business with futures customers, Cleared Swaps Customers, and 30.7 customers.

In addition, the Commission proposed amendments to § 22.2(d)(1) and (f)(6) that require an FCM to maintain at all times sufficient residual interest in Cleared Swaps Customer Accounts to exceed the sum of the margin deficits (*i.e.,* undermargined amounts) of all of its Cleared Swaps Customers. The proposed amendments to § 22.2(e)(1) that explicitly provide that an FCM shall bear sole responsibility for any losses resulting from the investment of Cleared Swaps Customer Funds in § 1.25 compliant instruments is consistent with the amendments adopted for § 1.29(b) that require an FCM to bear sole responsibility for any losses resulting from the investment of futures customers funds in § 1.25 compliant instruments. The proposed amendments to § 22.2(f)(4) provide that an FCM must be in compliance at all times with its segregation requirements for Cleared Swaps Customers is consistent with amendments adopted in § 1.20(a) that require an FCM to be in compliance at all times with its segregation requirements for futures customers. The proposed amendments in § 22.2(f)(5)(iii)(B) permit an FCM to develop its own program to assess credit risk for purposes of computing haircuts on securities securing a Cleared Swaps Customer's deficit account is consistent with the amendments adopted in 1.32 for computing haircuts on securities securing a futures customer's deficit account. The proposed amendments to § 22.2(g)(2), (3), and (5) require an FCM to prepare and submit to the Commission and the FCM's DSRO a daily Cleared Swap Segregation Schedule and twice monthly listing of the holding of Cleared Swaps Customer funds is consistent with the amendments adopted to § 1.32 that require an FCM to prepare and submit to the Commission and the FCM's DSRO a daily Segregation Schedule and twice monthly listing of the holding of futures customer funds.

Comments on the substantive provisions being adopted by the Commission under part 22 have been considered and addressed in large part in the discussion of the related substantive provisions in part 1 with respect to futures customer segregated funds. The Commission has considered those comments and, with the exception of the proposed amendments to § 22.2(a) and (f)(6), is adopting the amendments to part 22 as proposed.

In addition, several commenters, including MFA, CIEBA and Franklin urged the Commission to adopt a full physical segregation option specific for Cleared Swaps Customer Collateral.[552] This comment is outside of the scope of the proposal. The Commission, however, has previously clarified the ability of FCMs to employ third party custodial accounts for Cleared Swaps Customer Collateral, while reiterating that as customer property, in the event of an FCM insolvency, any funds held in such a third party custodial account would be subject to pro-rata distribution along with all other customer property.[553] Commission staff is also continuing to explore alternative collateral custody arrangements as directed by the Commission.[554]

As discussed in more detail above, several commenters objected to proposed residual interest requirements under §§ 1.20(i) and 22.2(f).[555] Of those commenters, a number focused on the proposed residual interest requirements for Cleared Swaps and highlighted the inconsistency of the ''at all times'' requirement with the Commission's analysis in the part 22 final rules.[556] LCH.Clearnet, ISDA, Paul/Weiss, and other commenters specifically stated that the inclusion of the language ''at all times'' is inconsistent with the LSOC requirement to calculate such deficits at the time of a margin call by a DCO to its clearing FCMs, and with the requirement to have sufficient residual interest to cover such deficit by the time the clearing FCMs are required to meet such payment obligations.[557] These commenters argued that when the Commission adopted the part 22 final rules, it considered this point in time

[551] *See* discussion in section I.A. above.

[552] MFA Comment Letter at 9 (Feb. 15, 2013); CIEBA Comment Letter at 3–4 (Feb. 20, 2013); Franklin Comment Letter at 2 (Feb. 15, 2013).

[553] 77 FR 6336, 6343.

[554] *Id.* at 6343–6344.

[555] *See* section II.G.9. above.

[556] *See* LCH.Clearnet Comment Letter at 4–5 (Jan. 25, 2013); FIA Comment Letter at 22–23 (Feb. 15, 2013).

[557] *See, e.g.,* LCH.Clearnet Comment Letter at 4–5 (Jan. 25, 2013); Paul/Weiss Comment Letter at 3–5 (Feb. 15, 2013); ISDA Comment Letter at 2–3 (Feb. 15, 2013). ISDA further argued that variation margin payments are not ''used'' until the point of settlement. *See* ISDA Comment Letter at 1–2 (Aug. 27, 2013) (citing CFTC Letter No. 12–31, ''Staff Interpretation Regarding Part 22,'' (November 1, 2012) (''Part 22 Staff Interpretation'') and arguing that the use restriction set forth in 4d(f)(2)(B) of the CEA ''is driven by the meaning of 'property . . . received' '' and that '''received' in this context cannot be intended to include variation margin fluctuations pre-settlement because it is only upon settlement that an item of property will have been received by the FCM.'').

approach to be consistent with the Act and sufficient to ensure that the collateral of one Cleared Swaps Customer is never used to margin the positions of another customer.[558]

In response to these comments, the Commission notes that the proposed amendments to § 22.2(a) and (f)(6) were meant to capture the current practice with respect to residual interest buffer calculations for Cleared Swaps using language that was consistent with the Proposed Residual Interest Requirement for futures. In other words, the Commission did not intend to alter the current residual interest requirements, as set forth in the part 22 final rules.[559] Indeed, the Commission notes that Staff guidance from November 1, 2012, states that ''FCMs are prohibited from 'us[ing] or permit[ing] the use of, the Cleared Swaps Customer Collateral of one Cleared Swaps Customer to purchase, margin, or settle the Cleared Swaps or any other trade or contract of, or to secure or extend the credit of, any person other than such Cleared Swaps Customer.' Where a Cleared Swaps Customer is undermargined, then the FCM must ensure that, to the extent of such shortfall, its own money, securities, or other property—and not that of other Cleared Swaps Customers—is used to cover a margin call (whether initial or variation) attributable to that Cleared Swaps Customer's portfolio of rights and obligations.'' [560]

Because of the confusion expressed by commenters regarding the residual interest requirements for Cleared Swaps, the Commission is revising § 22.2(a) and (f). The Commission is revising proposed § 22.2(a) by deleting the last sentence. The Commission is revising § 22.2(f)(6) by replacing the language from the proposal with new language which sets forth the residual interest requirements for Cleared Swaps in a manner that is consistent with current market practice and that parallels the language used in § 1.22. To be clear, and as requested by several commenters, the Commission confirms that the language in § 22.2(f)(6) is not intended to, and thus should not be read to, change current practice with respect to an FCM's residual interest requirements for Cleared Swaps as set forth in Commission regulations and JAC Update 12–03, and consistent with Staff Interpretation 12–31. Thus, ''where a Cleared Swaps Customer is undermargined,[561] the FCM must ensure that, to the extent of such shortfall, its own money, securities, or other property—and not that of other Cleared Swaps Customers—is used to cover a margin call (whether initial or variation) attributable to that Cleared Swaps Customer's portfolio of rights and obligations.'' [562] Consistent with this revised residual interest requirement, § 22.2(f)(4) is being amended to state that the amount of funds an FCM is holding in segregation may not be reduced by any debit balances that the futures customers of the futures commission merchants have in their accounts. Finally, § 22.2(f)(2) is being revised, consistent with 1.20(i)(2) and current market practice, to clarify that the calculation set forth therein is the Net Liquidating Equity Method.

R. Amendments to § 1.3: Definitions; and § 30.7: Treatment of Foreign Futures or Foreign Options Secured Amount

Part 30 of the Commission's regulations was adopted in 1987 and governs the offer and sale in the U.S. of futures contracts and options traded on or subject to the rules of a foreign board of trade.[563] The Commission proposed to amend several regulations in part 30 to provide a more coordinated approach to the regulations governing the offer and sales of futures contracts traded on foreign boards of trade and the comparable regulations governing the offer and sale of futures contracts traded on designated contract markets. Aligning the regulations, including regulations governing how an FCM holds funds for customers trading on non-U.S. markets with the requirements for customers trading on U.S. markets, will greatly enhance the protection of customer funds, and avoid competitive imbalances between trading on domestic and foreign contract markets that might result in regulatory arbitrage. The Commission's Proposal, along with the comments received, is discussed in the sections below.

1. Elimination of the ''Alternative Method'' for Calculating the Secured Amount

Regulation 30.7(a) requires an FCM to set aside in separate accounts for the benefit of its ''foreign futures or foreign options customers'' an amount of funds defined as the ''foreign futures or foreign options secured amount.'' The term ''foreign futures or foreign options customer'' is defined in § 30.1 as any person located in the U.S., its territories, or possessions who trades in foreign futures or foreign options. The term ''foreign futures or foreign options secured amount'' is defined in § 1.3(rr) as the amount of funds necessary to margin the foreign futures or foreign options positions held by the FCM for its foreign futures or foreign options customers, plus or minus any gains or losses on such open positions. The calculation of the foreign futures or foreign options secured amount as defined in § 1.3(rr) is referred to as the ''Alternative Method.''

Requirements concerning the collateral of foreign futures or foreign options customers are substantially less robust for funds deposited with an FCM under the Alternative Method than requirements concerning the collateral of futures customers deposited with an FCM under section 4d(a)(2) of the Act or Cleared Swaps Customer Funds deposited under section 4d(f) of the Act. Section 4d(a)(2) of the Act and §§ 1.20 and 1.22 require an FCM to hold in accounts segregated for the benefit of futures customers a sufficient amount of funds to satisfy the full account equities of all of the FCM's futures customers trading on designated contract markets.[564] Section 4d(f) and § 22.2 require an FCM to segregate for the benefit of Cleared Swaps Customers a sufficient amount of funds to satisfy the full account equities of all of the FCM's Cleared Swaps Customers. The calculations required under sections 4d(a)(2) and 4d(f) of the Act are referred to as the ''Net Liquidating Equity Method.''

The Alternative Method contrasts with the Net Liquidating Equity Method in that the Alternative Method obligates an FCM to set aside in separate accounts for the benefit of its customers an amount of funds sufficient to cover only the margin required on open foreign futures and foreign option positions, plus or minus any unrealized gains or losses on such positions. Any funds deposited by foreign futures or foreign options customers in excess of the amount required to be set aside in separate accounts may be held by the

[558] *See* LCH.Clearnet Comment Letter at 4–5 (Jan. 25, 2013); FIA Comment Letter at 22–23 (Feb. 15, 2013); ISDA Comment Letter at 2–3 (Feb. 15, 2013).

[559] *See also* Part 22 Staff Interpretation.

[560] *See id.* at 2 (answer to Question 2.1).

[561] In this context, a Cleared Swaps Customer is undermargined to the extent that (a) the minimum margin requirement, attributable to that Cleared Swaps Customer's portfolio of rights and obligations, at the DCO (for an FCM that is clearing such Cleared Swaps Customer's positions directly) or at the Collecting FCM (for a Depositing FCM) exceeds (b) the customer's net liquidating value, including securities posted at margin value.

[562] *See* Part 22 Staff Interpretation at 2.

[563] 52 FR 28980 (Aug. 5, 1987).

[564] The Commission is also adopting as final amendments to § 1.20(a) that clarify and provide explicitly that an FCM is required to hold funds in segregated accounts in an amount at all times in excess of its total obligations to all futures customers. *See* section II.G.9. above for a discussion of the amendments to § 1.20.

FCM in operating cash accounts and may be used by the FCM as if it were its own capital. Since an FCM is not required under the Alternative Method to set aside in separate accounts an amount of funds sufficient to repay the full account balances of each of its foreign futures or foreign options customers, the FCM may not be in a financial position to return 100 percent of the account equities (or transfer such account equities to another FCM) of each foreign futures or foreign options customer in the event of the insolvency of the FCM.

In addition § 30.7 further differs from the regulations governing how FCMs hold funds for futures customers and Cleared Swap Customers in that § 30.7 requires an FCM to set aside in a separate account funds only for ''foreign futures or foreign options customers.'' As previously stated, the term ''foreign futures or foreign options customer'' is defined in § 30.1 as any person located in the U.S., its territories, or possessions who trades in foreign futures or foreign options. Thus, an FCM is not required to set aside in separate accounts funds for foreign-domiciled customers trading on foreign futures markets. Regulation 30.7 permits an FCM to set aside funds for foreign futures customers located outside of the U.S., but an FCM is not obligated under the regulations to do so. Requiring FCMs to include foreign-domiciled customers' funds in segregated accounts benefits all customers placing funds on deposit for use in trading foreign futures and foreign options. Neither Subchapter IV of Chapter 7 of the Bankruptcy Code nor the Commission's part 190 regulations discriminate between foreign-domiciled and domestic-domiciled customers. Thus, any deficiency arising from the reduced requirements will impact both foreign and domestic customers pro rata.

The Commission proposed various amendments to the part 30 regulations to eliminate the Alternative Method and to require FCMs to use the Net Liquidating Equity Method to compute the amount of funds they must set aside in separate accounts for the benefit of foreign futures or foreign options customers. The Commission also proposed to extend the protections of part 30 to foreign-domiciled customers trading on foreign markets through an FCM. The intent of the proposed amendments is to provide 30.7 customers with equivalent protections available to futures customers and Cleared Swaps Customers by requiring each FCM to hold in secured accounts sufficient funds to cover the full Net Liquidating Equity of each customer trading on foreign futures markets.

To implement these revisions, the Commission proposed to define the term ''30.7 customer'' in § 30.1 to mean any person, whether domiciled within or outside of the U.S., that engages in foreign futures or foreign options transactions through the FCM. The Commission also proposed to amend § 1.3(rr) to match structurally the definition of the term ''customer funds'' in § 1.3(gg) [565] and to define the term ''foreign futures or foreign options secured amount'' to mean ''all money, securities and property received by an FCM for, or on behalf of, ''30.7 customers'' to margin, guarantee, or secure foreign futures and foreign options transactions, and all funds accruing to ''30.7 customers'' as a result of such foreign futures and foreign options transactions.'' The effect of the proposed amendments is to adopt the Net Liquidating Equity Method for foreign futures and foreign options by requiring an FCM to set aside in separate accounts a sufficient amount of funds to cover the full account balances (*i.e.,* the Net Liquidating Equities) of both the U.S. and foreign-domiciled customers.

The Commission also proposed to amend § 30.7(a) to allow an FCM to use an internal credit risk model to compute the appropriate market deductions, or haircuts, on readily marketable securities deposited by customers that have account deficits. The proposal is consistent with the proposed amendments for computing haircuts on securities under § 1.32(b) in section II.N. above. The result of these amendments as discussed should be consistency between the methodologies applied in the 4d segregation calculation and the § 30.7 calculation.

Consistent with proposed changes in § 1.20(i) and part 22, the Commission also proposed to add language to § 30.7(a) to provide that an FCM must hold residual interest in accounts set aside for the benefit of 30.7 customers equal to the sum of all margin deficits (*i.e.,* undermargined amounts) for such accounts, to provide an equivalent clear mechanism for ensuring that the funds of one 30.7 customer are not margining or guaranteeing the positions of another 30.7 customer

With the exception of the residual interest proposal, the Commission did not receive any comments on the various proposed amendments discussed above, including its proposal to eliminate the ''Alternative Method'' and to require FCMs to use the ''Net Liquidating Equity Method'' to compute the amount of funds they must set aside in separate accounts for the benefit of its foreign futures or foreign options customers. Accordingly, the amendments referred to above, with the exception of the residual interest proposal as discussed further below, are being adopted by the Commission.[566]

2. Funds Held in Non-U.S. Depositories

The Commission proposed to amend § 30.7(c) to limit the amount of 30.7 customers' funds that an FCM could hold in non-U.S. jurisdictions. Under the proposal, an FCM must hold 30.7 customer funds in the U.S., except to the extent that the funds held outside of the U.S. are necessary to margin, guarantee, or secure (including any prefunding obligations) the foreign futures or foreign options positions of an FCM's 30.7 customers. The proposal further allowed an FCM to deposit additional 30.7 customer funds outside of the U.S. up to a maximum of 10 percent of the total amount of funds required to be held by non-U.S. brokers or foreign clearing organizations for 30.7 customers as a cushion to meet anticipated margin requirements. The proposal also provided that the FCM must hold 30.7 customer funds under the laws and regulations of the foreign jurisdiction that provide the greatest degree of protection to such funds; and that the FCM may not by contract or otherwise waive any of the protections afforded customer funds under the laws of the foreign jurisdiction.

Several comments were received on the proposal. Pilot Flying J supported the requirement that 30.7 customer funds, if held outside of the U.S., must be held under the laws of the foreign jurisdiction that provides the funds with the greatest degree of protection.[567]

FIA and Jefferies each recommended that an FCM be permitted to maintain an excess of up to 50 percent of the amount an FCM is required to deposit with a foreign broker to maintain customer foreign futures and foreign options positions, a position that they

[565] The Commission recently adopted final regulations that revised the definitions in § 1.3. In this rulemaking, § 1.3(gg) was renumbered as 1.3(jjj) and re-designated ''futures customer funds.'' The substance of the definition, however, was not revised and the final rulemaking has no impact on the analysis in this rulemaking. *See* 77 FR 66288 (Nov. 2, 2012).

[566] *See* section II.R.4. below for a discussion of the residual interest proposal. CFA stated that it generally supported the proposed amendments to § 30.7 and treating customers from all parts of the globe in a similar manner. CFA Comment Letter at 9 (Feb. 13, 2013).

[567] Pilot Flying J Comment Letter at 2 (Feb. 14, 2013).

stated is consistent with § 1.17 that requires an FCM to incur a capital charge for unsecured receivables due from a foreign broker greater than 150 percent of the amount required to maintain positions in accounts with the foreign broker.[568] FIA recommended that, at a minimum, a cushion of 20 percent should be provided.[569] FIA stated that the proposal is more restrictive than the provisions of § 1.49, which set out the terms and conditions pursuant to which an FCM may hold futures customers' segregated funds and Cleared Swaps Collateral outside of the U.S. and suggested that the proposal be revised to permit an FCM to hold funds comprising the foreign futures and foreign options secured amount in depositories outside of the U.S. to the same extent that an FCM may hold futures customer segregated funds and Cleared Swaps Collateral outside of the U.S.[570] They further recommended that the ''10% limitation'' apply only to funds deposited with a foreign broker or foreign clearing organization.[571]

RCG requested the Commission to clarify application of § 30.7(c) as it relates to banks located outside the U.S. that FCMs use for settlement purposes, and how the limitation applies to variation amounts.[572]

Jefferies stated that the proposed rule disadvantages customers who may no longer deposit ''customer owned'' securities and would instead have to prefund their obligations with cash.[573]

Advantage stated that FCMs typically must maintain a relationship with a foreign bank in order to meet cutoff times for payment of fees and clearing on foreign exchanges and that if an FCM can't maintain funds at a foreign institution, it may inhibit its ability to trade foreign futures.[574] The effect, they asserted, could be that U.S. FCMs will be required to use non-U.S. brokers that are not regulated by the Commission for their foreign futures business.[575] They further requested that the Commission clarify how the prohibition on keeping non-margin foreign futures funds in an institution outside the U.S. would apply to § 30.7(b), which appears to allow such funds to be held at a bank or trust company outside the U.S.[576]

In response to commenter concerns, the Commission is adopting the amendments generally as proposed, but the final rule will permit an FCM to post with depositories outside of the U.S. sufficient funds to cover the full margin obligations imposed by foreign brokers or foreign clearing organizations on the FCM's 30.7 customers' positions, plus an additional amount equal to 20 percent of the required margin on such positions.

The Commission is increasing the amount of 30.7 customer funds that an FCM may hold in a foreign jurisdiction in response to the comments. The Commission is adopting this regulation to provide greater protection to both U.S. and foreign-domiciled customers in the event of the insolvency of the FCM. Recent experience has demonstrated that funds held outside of the U.S, at depositories subject to foreign insolvency regimes, present challenges and potential delays in the ability of the Trustee to return customer property to the customers of the FCM. In increasing the amount of funds an FCM may hold outside of the U.S. from 10 percent of the required margin to 20 percent of the required margin, the Commission is striving to strike a proper balance that would not interfere with the ability of 30.7 customers to trade on foreign markets (and the ability of FCMs to facilitate such transactions by allowing them to meet their 30.7 customers' margin and other financial obligations to foreign brokers and clearing organizations), with the Commission's desire to provide 30.7 customers with an appropriate level of protection in the event of the insolvency of an FCM. The Commission believes that, to the maximum extent commercially practicable, funds deposited by 30.7 customers that are not required to margin positions with foreign brokers or foreign clearing organizations should be held within in the U.S. to provide greater assurance that such funds would be subject to the bankruptcy provision of U.S. law and the Commission's regulations under the jurisdiction of U.S. courts.

The Commission further notes that the 20 percent limitation is based upon the amount of margin required on open positions. In response to RCG's request for clarification, FCMs may transfer funds to foreign depositories to cover variation margin calls and exclude such funds from the calculation of the 20 percent ''cushion.'' In addition, the Commission notes that FCMs may deposit 30.7 customer funds with any of the foreign depositories listed under § 30.7(b), provided that the FCMs do not exceed the 20 percent limit on the amount of funds that are permitted to be held in foreign jurisdictions. The Commission believes that the ability to post variation margin in foreign jurisdictions and an additional 20 percent cushion should allow FCMs to conduct foreign futures activities on behalf of their customers, while also providing additional protections to the current regulatory regime.

3. Commingling of Positions in Foreign Futures and Foreign Options Accounts

Commission staff previously issued an Advisory stating that while it was desirable for FCMs to hold only a customer's foreign futures transactions (and the funds supporting such transactions) in such customer's foreign futures account, this limitation was not mandatory and that the FCM could also hold such customer's unregulated transactions (and the funds supporting such transactions) in the foreign futures accounts.[577] Thus, pursuant to this Advisory, FCMs were permitted to commingle the funds supporting a customer's foreign futures and options transactions with such customer's unregulated transactions, including over-the-counter transactions. The Advisory was issued before the passage of Dodd-Frank, section 724(a) of which established in section 4d(f) of the CEA a segregation regime for the funds of cleared swaps customers, and the Commission's promulgation of part 22, implementing that statute.

In response to an FIA recommendation at a public roundtable held in advance of the Commission's publication of the proposal, the Commission proposed to amend § 30.7 by adopting new paragraph (e) to prohibit an FCM from commingling funds from unregulated transactions with funds for foreign futures and options transactions in part 30 secured accounts, except as authorized by Commission order. The prohibition on holding unregulated transactions or other non-foreign futures or foreign option transactions in part 30 set aside accounts is consistent with the treatment applicable under section 4d(a)(2) of the Act for segregated accounts and section 4d(f) of the Act for Cleared Swaps Customers' accounts.

The Commission noted in the proposal that when part 30 was being adopted, commenters cited back office operational difficulties with establishing multiple ''customer'' account classes or origins.[578] Given the technological changes during the intervening decades, and the new statutory and regulatory

[568] FIA Comment Letter at 37 (Feb. 15, 2013); Jefferies Bache Comment Letter at 6 (Feb. 15, 2013).

[569] FIA Comment Letter at 37 (Feb. 15, 2013).

[570] *Id. See also* RJ O'Brien Comment Letter at 11 (Feb.15, 2013).

[571] FIA Comment Letter at 37 (Feb. 15, 2013).

[572] RCG Comment Letter at 7 (Feb. 12, 2013).

[573] Jefferies Bache Comment Letter at 6 (Feb. 15, 2013).

[574] Advantage Letter at 8 (Feb. 15, 2013).

[575] *Id.* at 9.

[576] *Id.*

[577] CFTC Advisory No. 87–4 (Nov. 18, 1987).

[578] *See* 52 FR 28980, 28985–28986.

framework, these concerns should no longer dictate the advisability of commingling the funds of regulated foreign futures and foreign options transactions with unregulated transactions.

New § 30.7(e) extends the prohibition against commingling of customer funds currently found in section 4d(a)(2) futures customer accounts and section 4d(f) Cleared Swaps Customer Accounts to 30.7 customer accounts, except as otherwise permitted by Commission regulation or order.

CIEBA stated that it supported the prohibition on the commingling of funds deposited by futures customers, Cleared Swaps Customers, and 30.7 customers.[579] Nodal requested that the Commission make explicit in the adopting release that 30.7 accounts may continue to hold customer funds to margin contracts traded on a market that is pending designation as a contact market at the time the rules become effective, until such market is registered as a DCM or upon the withdrawal or denial of the DCM application.[580] LCH.Clearnet noted that while it does not have a position on whether the Commission should prohibit commingling of 30.7 customer funds with the funds of futures customers and Cleared Swaps Customers, if adopted, it urged the Commission to preserve the ability to allow such commingling pursuant to a Commission rule or order.[581]

The Commission is adopting new § 30.7(e) as proposed. As it noted in the proposal, should there be a need to permit commingling of funds, the Commission will continue to have the ability to permit such commingling under the formalities of processes associated with a Commission order or rule pursuant to section 4d of the CEA. Absent such a rule or order, however, protection for such customer property would not be available under the Commission's part 190 regulations or the Bankruptcy Code, and thus such commingling would not be permitted. In addition, the Commission does not agree with Nodal's request that FCMs may continue to hold margin funds in 30.7 accounts for positions that are executed on markets that are pending approval as designed contract markets. As noted above, a purpose of § 30.7(e) is to enhance the protection of 30.7 customers by prohibiting the commingling of 30.7 customer funds with funds held by an FCM for unregulated transactions. Commingling of unregulated transactions with regulated transactions could also impede the resolution of 30.7 customer claims in the event of the insolvency of the FCM carrying the funds.

4. Further Harmonization With Treatment of Customer Segregated Funds

The Commission proposed to adopt new paragraphs (f) and (k) in § 30.7, to extend regulatory provisions from §§ 1.20, 1.21, 1.22 and 1.24, that previously were applicable only to 4d segregated funds, to funds set aside as the foreign futures or foreign options secured amount under § 30.7. These proposed requirements would make clear that: (1) FCMs would not be permitted to use funds set aside as the foreign futures or foreign options secured amount other than for the benefit of 30.7 customers; (2) FCMs must hold sufficient residual interest in 30.7 accounts to make sure that 30.7 customer funds of one 30.7 customer are not used to margin, secure or guarantee the obligations of other customers; (3) funds set aside as the foreign futures or foreign options secured amount should not be invested in any obligations of clearing organizations or boards of trade; and (4) no funds placed at foreign brokers should be included as funds set aside as the foreign futures or foreign options secured amount unless those funds are on deposit to margin the foreign futures or foreign options positions of 30.7 customers. In addition to extending the existing Commission regulations noted above to § 30.7, the Commission also proposed a new requirement prohibiting an FCM from imposing any liens or allowing any liens to be imposed on funds set aside as the foreign futures or foreign options secured amount. This requirement parallels that currently applicable to cleared swap customers with respect to the segregation of Cleared Swaps Collateral.[582]

As discussed above, the Commission received several comments regarding the residual interest requirements set forth in the Proposal.[583] While most of the commenters focused on the impact of the Proposed Residual Interest Requirement to the futures market, some of the more general comments would also apply to the foreign futures or foreign options market. Given the statutory prohibition in sections 4d(a) and 4d(f) of the Act against using one customer's funds to margin, secure or guarantee the obligations of another customer, FCMs that participate in the swaps and futures market may not ''use'' one customer's property to margin another customer's positions. Nonetheless, the Commission clarified that an FCM does not ''use'' a customer's funds until the time of settlement.[584]

The Commission recognizes that the statutory prohibitions set forth in sections 4d(a) and 4d(f) of the Act apply to the futures and swaps markets. Conversely, as discussed above, the proposed changes to § 30.7 were intended to provide a more coordinated approach to the regulations governing foreign futures and foreign options, with standards that are consistent with those for the futures and swaps markets. These regulations, including regulations governing how an FCM holds funds for customers trading on non-U.S. markets, would greatly enhance the protection of customer funds and avoid regulatory arbitrage. Such consistency would, to the extent practicable and appropriate, contribute to the goal of having customer protection across futures, swaps and foreign futures markets be substantively similar.

The Commission did not receive any comments opposing the concept of having consistent residual interest requirements across markets. The Commission did, however, receive comments regarding the additional complexities associated with trading foreign futures and foreign options.[585] As such, the Commission is adopting residual interest requirements in part 30 that are substantively similar to the amended requirement in part 1, but with a modification as to the time by which an FCM must maintain such residual interests that will give FCMs the flexibility necessary to account for differences in the regulatory requirements and market practices applicable to foreign brokers and clearing organizations in other jurisdictions. Thus, the Commission is revising § 30.7(f) as follows.

Regulation 30.7(f)(1)(i) sets forth the general requirement that an FCM may not use, or permit the use of, the funds of one 30.7 customer to purchase, margin or settle the trades, contracts, or commodity options of, or to secure or extend credit to, any person other than such 30.7 customer. Regulation 30.7(f)(1)(ii)(A) states that the undermargined amount for a 30.7 customer's account is the amount, if any (*i.e.,* the must be amount equal to or

579 CIEBA Comment Letter at 4 (Feb. 20, 2013).

580 Nodal Comment Letter at 1–2 (Jan. 21, 2013).

581 LCH.Clearnet Comment Letter at 6–7 (Jan. 25, 2013).

582 *See* § 22.2(d)(2).

583 *See* sections II.G.9. and II.Q. above for discussion of the Proposed Residual Interest Requirement.

584 *See* section II.G.9. above.

585 *See* Roundtable Tr. at 266–267 (Feb. 5, 2013).

greater than zero), by which the total amount of collateral required for that 30.7 customer's positions in that account at a specified time exceeds the value of the 30.7 customer funds in that account, as calculated in new § 30.7(f)(2)(ii). Regulation 30.7(f)(1)(ii)(B) requires FCMs to perform a residual interest buffer calculation, at the close of each business day, based on the information available to the FCM at that time, by calculating (*1*) the undermargined amounts, based on the clearing initial margin that will be required to be maintained by that FCM for its 30.7 customers, at each clearing organization of which the FCM is a member, at any settlement that will occur before 6:00 p.m. Eastern Time on the following business day for each such clearing organization less (*2*) any debit balances referred to in § 30.7(f)(2)(B)(iv) that is included in such undermargined amounts.

In addition, and for the reasons set forth above, pursuant to § 30.7(f)(1)(ii)(C)(*1*) FCMs must maintain residual interest prior to 6:00 p.m. Eastern Time on the date referenced in § 30.7(f)(1)(ii)(B) in segregated funds that is equal to or exceeds the computation set forth in (ii)(B). Moreover, § 30.7(f)(1)(ii)(C)(*2*) provides that an FCM may reduce the amount of residual interest required in § 30.7(f)(1)(ii)(C)(*1*) to account for payments received from or on behalf of undermargined 30.7 customers (less the sum of any disbursements made to or on behalf of such customers) between the close of business the previous business day and 6:00 p.m. Eastern Time on the following business day. Regulation 30.7(f)(1)(ii)(D) provides that for purposes of § 30.7(f)(1)(ii)(B), an FCM should include, as clearing initial margin, customer initial margin that the FCM will be required to maintain, for that FCM's 30.7 customers, at a foreign broker, and, for purposes of § 30.7(f)(1)(ii)(C), must do so by 6:00 p.m. Eastern Time. In other words, § 30.7(f)(1)(ii)(D) is intended to make clear that the requirements with respect to 30.7 customer funds that are used by an FCM that clears through a foreign broker are parallel to the requirements applied to 30.7 customer funds that are used when an FCM clears directly on a clearing organization.

Finally, to provide greater clarity, the Commission is adding a new subparagraph (2) to paragraph (f), which sets out the requirements as to the FCM's calculation of the Net Liquidating Equities of their 30.7 customers. Because of the addition of new subparagraph (2), the Commission is renumbering proposed § 30.7(f)(2) and (f)(3) to § 30.7(f)(3) and (f)(4), and since the Commission did not receive any comments on the substantive provisions of these paragraphs, it is adopting them as proposed.

The Commission did not receive any comments on the substantive provisions of proposed § 30.7(k) and is adopting this new paragraphs as proposed.

MFA, however, requested confirmation that the Commission's prior guidance with respect to a customer's authority to grant liens or security interests on its own Cleared Swaps Customer Account under part 22 would also be applicable to customers on their foreign futures or foreign options secured amount under § 30.7.[586] The Commission agrees with this position and hereby confirms the applicability of its prior guidance.[587]

5. Harmonization With Other Commission Proposals

The Commission also proposed various other amendments to its part 30 regulations to harmonize the rules with those applicable to U.S. customers under other Commission regulations.

As discussed in section II.I. above, the Commission is adopting in this release new limitations on withdrawals of segregated funds in § 1.23. The amendments provide for an FCM's residual interest in segregated funds, and permit withdrawals from segregated funds for the proprietary use of the FCM to the extent of such residual interest, subject to the requirement that the withdrawal must not occur prior to the completion of the daily segregation computation for the prior day, and should the withdrawal (individually or aggregated with other withdrawals) exceed 25 percent of the prior day residual interest, the withdrawal must be subject to specific approvals by senior management and appropriately documented, and further subject to a complete prohibition on withdrawals of residual interest to the extent necessary to maintain proper residual interest to cover undermargined amounts. The Commission proposed and is adopting paragraph (g) of § 30.7 to apply the same restrictions on withdrawals of an FCM's residual interest in funds set aside as the foreign futures or foreign options secured amount.

Current § 30.7(g) was recently adopted by the Commission to provide that the investment of § 30.7 funds be subject to the investment limitations contained in § 1.25.[588] As proposed, the Commission is moving this permitted investment requirement to a new paragraph § 30.7(h), and further is adopting a new paragraph § 30.7(i) to make clear that FCMs are solely responsible for any losses resulting from the permitted investment of funds set aside as the foreign futures or foreign options secured amount. New paragraph § 30.7(i) is intended to apply the same standard as is being adopted in the amendment to § 1.29 for segregated funds discussed above.

The Commission also proposed and is adopting an amended paragraph (j) to § 30.7 to clarify the circumstances under which an FCM may make secured loans to 30.7 customers and to adopt the same restriction on unsecured lending to 30.7 customers as has been adopted with respect to futures customers and 4d segregated funds in the amendment to § 1.30 discussed above.

Finally, the Commission proposed and is adopting an amended paragraph (l) to § 30.7 to require the daily computation of the foreign futures or foreign options secured amount and the filing of such daily computation with the Commission and DSROs, as well as to require the FCM to provide investment detail of the foreign futures or foreign options secured amount as of the middle and end of the month. The amendments to paragraph (l) of § 30.7 are intended to be consistent with the requirements for the daily segregation calculation for segregated customer funds and the provision of the segregation investment detail which are adopted in § 1.32.

No comments were received on the above proposals and the Commission is adopting the amendments as proposed.

S. § 3.3: Chief Compliance Officer Annual Report

Regulation 3.3 requires each FCM (as well as swap dealers and major swap participants) to designate an individual to serve as its CCO. The CCO is required

[586] MFA Comment Letter at 10 (Feb. 15, 2013).

[587] Specifically, In the Final LSOC Release the Commission clarified:

> an FCM may not, under any circumstances, grant a lien to any person (other than to a DCO) on its Cleared Swaps Customer Account, or on the FCM's residual interest in its Cleared Swaps Customer Account. On the other hand, a Cleared Swaps Customer may grant a lien on the Cleared Swaps Customer's individual cleared swaps account (an 'FCM customer account') that is held and maintained at the Cleared Swaps Customer's FCM.

77 FR at 6352.

In addition, Commission Staff issued an interpretive letter that stated:

> Regulation 22.2(d) does not prohibit a Cleared Swaps Customer from granting security interests in, rights of setoff against, or other rights in its own Cleared Swaps Customer Collateral, regardless of whether those assets are held in the Cleared Swaps Customer's FCM customer account. Furthermore, nothing in the rule is intended to inhibit this right of the Cleared Swaps Customer.

CFTC Letter No. 12–28 at 2 (Oct. 17, 2012).

[588] 76 FR 78776, 78802 (December 19, 2011).

to be vested with the responsibility and authority to develop, in consultation with the FCM's board of directors or senior officer, appropriate policies and procedures to fulfill the duties set forth in the Act and Commission regulations relating to the FCM's activities as an FCM. Regulation 3.3(e) also requires the FCM's CCO to prepare an annual compliance report that includes a description of any non-compliance events that occurred during the last reporting period along with the action taken to address such events. The annual compliance report currently is required to be filed electronically with the Commission simultaneously with the FCM's certified annual financial report, and in no event later than 90 days after the firm's fiscal year end.

The Commission proposed a conforming amendment to § 3.3(f)(2) to reflect the amendments to § 1.10(b)(1)(ii), discussed in section II.A. above, that require an FCM to file its annual certified financial statements with the Commission within 60 days of the firm's fiscal year end. In this regard, the Commission proposed to require that each FCM file the CCO annual report with the Commission simultaneously with the filing of the firm's certified annual report, and in no event later than 60 days after the FCM's fiscal year end.

The NFA commented that it supported the proposal.[589] No other comments were received. The Commission has determined to amend § 3.3 as proposed.

III. Compliance Dates

The final regulations will be effective January 13, 2014. The compliance date for the regulations will be the effective date, subject to the following exceptions:

A. Financial Reports of FCMs: § 1.10

An FCM that is not dually-registered as a BD currently is required to submit its certified annual report to the Commission within 90 days of the firm's year end date. The Commission has amended § 1.10(b)(1)(ii) to require such certified annual report to be submitted within 60 days of the firm's year end date.

The Commission recognizes that many FCMs have contracted with public accountants to perform the current year's audit examination, and that those audits are currently in process. In order to allow the current year audits to be completed, the Commission is setting a compliance date for § 1.10(b)(1)(ii) for FCMs with years ending after June 1, 2014. This date will also coincide with several other compliance dates affecting public accountants discussed under § 1.16 below.

B. Risk Management Program for FCMs: § 1.11

Section 1.11 requires each FCM that carries customer funds to establish a risk management program. RJ O'Brien requested that the Commission provide at least one year for FCMs to comply with the new risk management regulations in the event the proposed Risk Management Program is adopted. RJ O'Brien stated that the new requirements would likely necessitate a period of time for firms to reorganize, develop the policies and procedures, implement the policies and procedures, acquire adequate personnel, and conduct extensive training of new and existing employees. Advantage stated ''that most aspects of proposed § 1.11 are appropriate and unlikely to be burdensome as FCMs typically have most (if not all) of these requirements in place.'' [590]

The Commission recognizes that some FCMs may need a sufficient period of time to develop and implement a risk management program that complies with § 1.11, but believes that many firms already maintain programs that comply with many of the requirements in § 1.11. Accordingly, FCMs must file their initial Risk Management Program within 180 days of the effective date of the regulation. The filings must be made via electronic transmission to the Commission using the WinJammer electronic filing system.

C. Qualifications and Reports of Accountants: § 1.16

The Commission is amending § 1.16 to require a public accountant to meet certain qualification standards in order to be qualified to conduct audits of FCMs. The Commission is amending § 1.16(b) to require that the public accountant: (1) Must be registered with the PCAOB; (2) must have undergone a PCAOB inspection; and (3) may not be subject to a temporary or permanent bar to engage in the audit of public issuers or BDs as a result of a PCAOB disciplinary action. The Commission is further amending § 1.16(c) to require that the public accountant's audit report must state whether the audit was conducted in accordance with PCAOB auditing standards.

The Commission is establishing a compliance date of June 1, 2014 for the amendment to § 1.16(b)(1) that requires a public accountant to be registered with the PCAOB in order to conduct an audit of an FCM. The Commission also is establishing a compliance date of June 1, 2014 for the amendment to § 1.16(c) that requires a public accountant to conduct an audit of an FCM in accordance with the standards issued by the PCAOB. A compliance date of June 1, 2014 will allow current year audits to be completed without interruption, and provides sufficient time for public accountants that audit FCMs to register with the PCAOB if such public accountants are not already registered. In addition, a June 1, 2014 compliance date will align the Commission's requirements for the use of PCAOB standards in the audit of an FCM with the SEC audit standards for public accountants auditing BDs.[591] Without such alignment, public accounts of a dually-registered FCM/BD would have to issue two different audit reports; one audit report to the SEC for an examination conducted under PCAOB audit standards, and a second audit report for the Commission for an examination conducted under U.S. GAAS.

The Commission also is establishing a compliance date of December 31, 2015 for the requirement in § 1.16 that a public accountant must have undergone an inspection by the PCAOB in order to qualify to conduct an audit of an FCM. The extension of the compliance date to December 31, 2015 will provide additional time for the PCAOB to conduct inspections of public accountants that registered with, but have not been inspected by, the PCAOB.

Lastly, the compliance date for the amendment to § 1.16(b)(1) the provides that a public accountant may not be subject to a temporary or permanent bar to engaging in the audit of public issuers or BDs as a result of a PCAOB disciplinary action is the effective date of the amendment. The Commission believes that if a public accountant is registered with the PCAOB and is subject to a PCAOB disciplinary action that temporarily or permanently bars the public accountant from auditing public issuers, the public accountant is not qualified to conduct audits of FCMs.

D. Minimum Financial Requirements for FCMs

The Commission is amending the capital rule to require an FCM to incur a capital charge for undermargined

[589] NFA Comment Letter at 9 (Feb. 15, 2013).

[590] Advantage Comment Letter at 2 (Feb. 15, 2013).

[591] The SEC recently amended its regulations to require public accountants to conduct audits of BDs pursuant to the audit standards issued by the PCAOB. This requirement is effective for audits of BDs with a year-end of June 1, 2014 or later. *See* 78 FR 51910 (Aug. 21, 2013).

customer, noncustomer, and omnibus accounts that are undermargined more than one business day after a margin call is issued by the FCM. For example, if an account is undermargined on Monday and the FCM issues a margin call on Tuesday, the FCM would have to take a reduction to capital equal to the amount of the margin call that was not met by close of business Wednesday.

The Commission is establishing a compliance date for the revised timeframe for the capital charges required by § 1.17(c)(5)(viii) and (ix) of one year following publication of this rule in the **Federal Register**. The compliance date provides FCMs with a period of time that the Commission believes is sufficient to adjust its systems for issuing and collecting margin from customers and provides customers with an opportunity to adjust their operations, as necessary, to meet its margin obligations on a reduced timeframe for the current regulation.

E. Written Acknowledgment Letters: §§ 1.20, 1.26, and 30.7

The Commission is amending §§ 1.20(d) and (g), 1.26(b), and 30.7(d) to require FCMs and DCOs, as applicable, to obtain standard form acknowledgment letters from each depository that the FCMs or DCOs use to hold customer funds.[592] The Commission is further requiring FCMs and DCOs to use Template Letters set forth in appendices to the regulations.

The Commission is establishing a compliance date of 180 days after the effective date of the regulations in order to provide FCMs and DCOs with sufficient time to obtain from depositories new acknowledgment letters that conform to the Template Letters.

F. Undermargined Amounts: §§ 1.22(c), 30.7(f)

The Commission received several comments on the appropriate timing for the effectiveness of the Proposed Residual Interest Requirement. At the public roundtable held on February 5, 2013, several panelists argued that the Proposed Residual Interest Requirement would require substantial time to implement in order to change the behavior of all futures markets participants.[593] In addition, FIA asserted that implementation would require multiple years and ''radical'' changes to processing procedures for futures market participants,[594] and RCG requested that the Commission provide ''with a period of time not less than one year from the promulgation of the relevant final rules for FCMs to implement them.''[595]

As discussed above, the residual interest requirements set forth in part 22 are the requirements that are currently in place today. As such, FCMs are expected to continue meeting their regulatory requirements. With respect to the residual interest requirements set forth in §§ 1.22(c) and 30.7(f), the Commission recognizes that these requirements represent a significant change in current market practice. Given the costs associated with compliance with these requirements, as well as comments received from the interested parties requesting sufficient time to achieving compliance with these requirements, the Commission has determined that a phased compliance schedule for § 1.22(c) is necessary and appropriate. The phased compliance schedule for § 1.22(c) is set forth in § 1.22(c)(5)(iii). However, the Residual Interest Deadline of 6:00 p.m. Eastern Time in § 1.22(c)(5)(ii) shall begin one year following the publication of this rule in the **Federal Register**.[596] With regards to the residual interest requirements set forth in § 30.7(f), the Commission is establishing a compliance date of one year following the publication of this rule in the **Federal Register**.

G. SRO Minimum Financial Surveillance: § 1.52

The Commission amended § 1.52 to require each SRO to establish a supervisory program to oversee their member FCMs' compliance with SRO and Commission minimum capital and related reporting requirements, the obligation to properly segregated customer funds, risk management requirements, financial reporting requirements, and sales practices and other compliance requirements. The Commission also amended § 1.52(c) to require each SRO to engage an ''examinations expert'' at least once every three years to evaluate the quality of the supervisory oversight program and the SRO's application of the supervisory program. The SRO must obtain a written report from the examinations expert with an opinion on whether the supervisory program is reasonably likely to identify a material weakness in internal controls over financial and/or regulatory reporting, and in any of the other areas that are subject to the supervisory program.

The Commission established a compliance date in amended § 1.52(e) that requires each SRO to submit a supervisory program to the Commission for review, together with the examinations expert's report on the supervisory program, within 180 days of the effective date of the amendments to § 1.52, or such other time as may be approved by the Commission. The Commission further revised § 140.91(10) to delegate the authority to extend the time period for the submission of the initial supervisory program to the Director of the Division of Swap Dealer and Intermediary Oversight and the Director Division of Clearing and Risk, with the concurrence of the General Counsel or, in his or her absence, a Deputy General Counsel.[597]

Commission staff will consult with the SROs to assess their progress in preparing an initial supervisory program, including the examinations expert's review, and may adjust compliance dates as appropriate.

H. Public Disclosures by FCMs: § 1.55

The Commission has amended § 1.55(b) by revising the Risk Disclosure Statement to include several additional disclosures intended to provide customers and potential customers with enhanced information to further their understanding of the risks of engaging in the futures markets. The Commission recognizes that FCMs will be required to revise the Risk Disclosure Statement to implement the revisions, and is establishing a compliance date for the amendments to 1.52(b) of 90 days after the effective date of the amendments. The Commission believes that this provides sufficient time for FCMs to revise the Risk Disclosure Statement and to modify their systems, if necessary, in the case of firms that

[592] The regulations, however, provide that an FCM is not required to obtain an acknowledgment letter from a DCO if the DCO maintains rules that have been submitted to the Commission and that provide for the segregation of customer funds in accordance with all relevant provisions of the Act and Commission regulations or orders. *See* §§ 1.20(d)(1) and 30.7(d)(1).

[593] *See* Roundtable Tr. at 252–255, 257, 266–267 (Feb. 5, 2013).

[594] *See* FIA Comment Letter at 21 (Feb. 15, 2013).

[595] *See* RCG Comment Letter at 8 (Feb. 12, 2013).

[596] For further discussion regarding the phase-in schedule for the requirements in § 1.22(c), *see* section II.G.9.

[597] The Commission also amended § 1.52(d)(2)(ii)(H) to provide that a Joint Audit Committee must submit an initial Joint Audit Program to the Commission, along with an examinations expert's report on the Joint Audit Program, within 180 days of the effective date of the regulation. The Director of the Division of Swap Dealer and Intermediary Oversight and the Director of the Division of Clearing and Risk also are authorized under § 1.52(d)(2)(ii)(H) an § 140.91(10), with the concurrence of the General Counsel or, in his or her absence, a Deputy General Counsel, to extend the initial filing deadline if warranted.

provide electronic account opening documents.

The Commission also amended § 1.55(i)–(k) to require each FCM to disclose to customers all information that would be material to the customers' decision to entrust funds to, or otherwise do business with, the FMC, including its business, operations, risk profile, and affiliates. The Commission is establishing a compliance date of 180 days after the effective date of the regulation to provide adequate time for FCMs to develop the required disclosures and make them available to the public.

The Commission also amended § 1.55(o) to require each FCM to disclose on its Web site certain current and historical information regarding its holding of customer funds, and its certified annual report. The Commission is establishing a compliance date of 180 days after the effective date of the regulation to provide FCMs with sufficient time to modify electronic systems, and make any additional operational changes, necessary for the firms to comply with the requirements.

IV. Cost Benefit Considerations

Statutory Mandate To Consider the Costs and Benefits of the Commission's Action: Commodity Exchange Act Section 15(a)

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the Act or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and the financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) considerations.

In the NPRM, the Commission established, based on the subject matter of the proposals, that it did not consider any of the proposals contained therein to have any significant impact on price discovery. The Commission received no responses from commenters with respect to its analysis regarding price discovery. For the remaining areas, the Commission addressed, section by section, the qualitative substantial benefits perceived to be obtained from the regulatory proposals contained in the NPRM. Where reasonably possible, the Commission has estimated costs quantitatively associated with such proposals section by section. The Commission asked specifically and generally for comments with respect to its analysis of benefits and such cost estimates, and requested information from commenters where the Commission qualitatively considered but could not reasonably quantitatively estimate costs.

The underlying purpose of the regulations adopted herein as stated in the NPRM was to bolster the protection of customers and customer funds, in response to the misuse or mishandling of customer funds at specific FCMs like MFGI or PFGI. Further, the purpose of certain proposals was to provide regulators the means by which to detect and deter the misuse or mishandling of customer funds by FCMs, including bolstering standards for the examination and oversight of FCMs by SROs and public accountants. In addition to the significant benefits to the protection of market participants and the public, the Commission determined that a strong package of reforms, including enhanced information and disclosures available to customers, adopted in light of the recent FCM failures resulting in and from misuse of customer funds, would be extremely beneficial to restore trust in the financial integrity of futures markets. The Commission also included certain proposals intended to both increase the protection of customer funds and strengthen FCM risk management, specific to customer funds processes and procedures.

As stated in the NPRM, a loss of trust in the financial integrity of futures markets could deter market participants from the benefits of using regulated, transparent markets and clearing. The overarching purpose of the reforms contained in this rulemaking is to produce the benefits that accrue by virtue of avoiding similar defaults in the future. This prevents the costs certain to follow, including lost customer funds, decreased market liquidity that follows from a crisis in confidence, and the potential for the failure of one FCM to cause losses in other clearing members.[598]

In this rulemaking, the Commission adopted new rules and amended existing rules to improve the protection of customer funds. The content of the Commission's adopted new rules and amended rules can be categorized in seven parts: (1) requiring FCMs to implement extensive risk management programs including written policies and procedures related to various aspects of their handling of customer funds; (2) increasing reporting requirements for FCMs related to segregated customer funds, including daily reports to the Commission and DSRO; (3) requiring FCMs to establish target amounts of residual interest to be maintained in segregated accounts as well as creating restrictions and increased oversight for FCM withdrawals out of such residual interest in customer segregated accounts, specifically including clear sign off and accountability from senior management for such withdrawals; (4) strengthening requirements for the acknowledgment letters that FCMs and DCOs must obtain from their depositories; (5) eliminating the Alternative Method for calculating 30.7 customer funds segregation requirements and requiring FCMs to include foreign investors' funds in segregated accounts; (6) strengthening the regulatory requirements applicable to SRO and DSRO oversight of FCMs, including regulating oversight provided under the function of a Joint Audit Committee that would establish standards for, and oversee the execution of, FCM audits; and (7) requiring FCMs to provide additional disclosures to investors.

Overview of the Costs and Benefits of the Proposed Rules and Amendments in Light of the 15(a) Considerations—Protection of Market Participants and the Public

The Commission designed the adopted reforms to improve the protection of customer funds. The Commission expects each of the seven categories identified above to significantly increase the levels of protection for customer funds. Requiring FCMs to implement risk management programs that include documented policies and procedures regarding various aspects of handling customer funds helps to protect customer funds by promoting robust internal risk controls and reducing the likelihood of errors or fraud that could jeopardize customer funds. In addition, by requiring each FCM to document certain policies and procedures, the rules enable the Commission, DSROs, and other auditors to evaluate each FCM's compliance with their own policies and procedures. Moreover, the requirement that FCMs establish a program for quarterly audits by independent or external people that is designed to identify any breach of the policies and procedures helps to ensure

[598] The failure of one clearing member could lead to losses for other clearing members if the losses due to the first member's failure are large enough to exhaust the guarantee fund and require additional capital infusion from other clearing members.

regular, independent validation that the procedures are followed diligently. Audits of this sort provide more thorough review of internal procedures than the Commission or DSROs are able to perform regularly with existing resources, which provides helpful scrutiny of each FCM's procedures on a regular basis. This, together with the requirement that FCMs establish a program of governing supervision that is designed to ensure the policies required in § 1.11 are followed, will tend to promote compliance with the FCM's own policies and procedures. And by promoting such compliance, the requirements reduce the risk of operational errors, lax risk management, and fraud, and thus the risk of consequent loss of customer funds.

Increasing reporting requirements for FCMs related to segregated customer funds helps the Commission and DSRO identify FCMs that should be monitored more closely in order to safeguard customer funds. Moreover, by making some additional reported information public, the rules facilitate additional market discipline that further promotes protection of customer funds.

Creating restrictions and increased oversight for FCM withdrawals out of its residual interest in customer segregated accounts, and requiring review by senior management for large withdrawals protects customers by helping to ensure that such withdrawals do not cause segregated account balances to drop below required amounts, which are, in turn, designed to prevent losses of customer funds. Moreover, requiring personal accountability by senior management for withdrawals that affect the balance of such accounts promotes more effective oversight of customer segregated accounts.

The acknowledgments and commitments depositories are required to make through §§ 1.20, 1.26, and 30.7 provide additional protection for customer funds by, among other things, requiring depositories that accept customer funds to acknowledge that customer funds cannot be used to secure the FCM's obligations to the depository. Such an acknowledgment provides additional protection of customer funds and fosters prompt transfer in the event of an FCM's default.

In addition, depositories must agree in the acknowledgment letter to give the Commission and DSROs read-only electronic access to an FCM's segregated accounts, which benefits customers by enabling the Commission and DSROs to review the accounts for discrepancies between the FCM's reports and the balances on deposit at various depositories. These enhancements to oversight provide an additional mechanism by which customers would be protected against a shortfall in customer funds due to operational errors or fraud.

Requiring FCMs to include foreign-domiciled customers' funds in segregated accounts benefits all customers placing funds on deposit for use in trading foreign futures and foreign options. Because neither the Bankruptcy Code nor the Commission's part 190 regulations distinguish between foreign-domiciled and U.S. domiciled customers at the point customer funds are distributed, any shortfall in available funds would be shared among all such customers. As discussed below, the Commission understands that most, if not all, FCMs currently compute secured amount requirements for both U.S.-domiciled and foreign-domiciled customers. However, incorporating foreign-domiciled customers within the calculations required for 30.7 customers ensures that both groups are fully protected. Similarly, eliminating the Alternative Method provides additional protection to customer funds by ensuring that FCMs are not allowed to reduce their segregation requirements for 30.7 accounts during a time of financial strain. As discussed below, this change provides protection to both U.S-domiciled and foreign-domiciled customers with funds in 30.7 accounts.

The provisions in § 1.52 include additional requirements for both the supervisory program for SROs as well as for the formation of a Joint Audit Committee to oversee the implementation and operation of a Joint Audit Program that directs audits of FCMs by DSROs. By requiring both the SRO supervisory programs and the Joint Audit Program to comply with U.S. generally accepted audit standards, to develop written policies and procedures, to require controls testing as well as substantive testing, and to have an examinations expert review the programs at least once every two years, the amendments help to ensure that audits of FCMs by SROs or DSROs are thorough, effective, and continue to incorporate emerging best practices for such audits. As a consequence, the amendments help to ensure that audits are as effective as possible at identifying potential fraud, strengthening internal controls, and verifying the integrity of FCMs' financial reports, each of which tend to provide protection for FCMs' customers, counterparties, and investors.

In addition § 1.55 requires disclosure of firm-specific risks to customers. This additional information should be helpful to customers when selecting an FCM to deposit their funds. In doing so, the rules promote market discipline that incents FCMs to manage their risks carefully and assists customers in understanding how their funds are held and what risks may be relevant to the safety of their funds.

Last, FCMs maintaining residual interest in customer accounts is an important aspect of protection for customer funds. While an FCM's residual interest is not exhausted, it may be used to meet the FCM's obligations to each customer without using another customer's funds to do so. All else being equal, the larger the residual interest, the less likely that market participants will lose customer funds posted as collateral, with associated detriment to members of the public with interests in such market participants.

Efficiency, Competitiveness and Financial Integrity of Futures Markets

The proposed amendments should increase the efficiency and financial integrity of the futures markets by ensuring that FCMs have strong risk management controls that are subject to multiple and enhanced external checks, by enhancing reporting requirements, facilitating increased oversight by the Commission and DSROs, by allowing FCMs flexibility in the development of newly required policies and procedures wherever the Commission has determined that such flexibility is appropriate, and by requiring FCMs to implement training regarding the handling of customer funds. In addition, the rules include some requirements that many industry participants have requested as necessary for the adequate protection of customers and also highlighted as best practices already adopted within the industry. Requiring such standards to be adopted by all FCMs promotes the competitiveness of futures markets by preventing an FCM from skimping on customer protection safeguards. There are also provisions in the proposal that permit FCMs that are not BDs to implement certain securities net capital haircuts that apply to jointly registered FCM/BDs by the SEC. This enhances competition between FCMs that are not dually registered and jointly registered FCM/BDs with respect to such requirements.

Smaller FCMs may have more difficulty than large FCMs in absorbing the additional costs created by the requirements of the rules (particularly § 1.22). It is possible that some smaller FCMs may elect to stop operating as FCMs as a result of these costs. The Commission does not anticipate, however, that the rules will have a material effect on FCM pricing due to reduced competition (although the increased costs may affect pricing).

More specifically, the amendments to §§ 1.10, 1.11, 1.12, 1.32, 22.2, and 30.7 increase reporting requirements for FCMs related to segregated customer funds, including daily, bi-monthly, and additional event-triggered reports to the Commission and DSROs. The expanded range and frequency of information that the Commission and DSRO receive under the proposed regulations enhances their ability to monitor each FCM's segregated accounts, which promotes the integrity of futures markets by helping to ensure proper handling of customer funds at FCMs.

In addition, the changes facilitate increased oversight by the Commission and DSROs by including additional notification requirements, obligating FCMs to alert the Commission when certain events occur that could indicate an FCM's financial strength is deteriorating or that important operational errors have occurred. Such notifications should enable the Commission and DSROs to increase monitoring of such FCMs to ensure that customer funds are handled properly in such circumstances. The rules also require FCMs to obtain an acknowledgment letter from depositories that should give the Commission and DSROs electronic access to view customer accounts at each depository when requested by the Commission. That should enable both the Commission and DSROs to verify the presence of customer funds which would provide a safeguard against fraud and would promote the integrity of markets for futures, cleared options, and cleared swaps.

The rules also require FCMs to establish policies and procedures regarding several aspects of how they handle customer funds. The rules should give FCMs the flexibility, where appropriate, to develop policies and procedures tailored to the unique composition of their customer base, size, and other operational disincentives. This flexible approach protects FCMs from additional regulatory compliance costs that could otherwise result from rules requiring every FCM to operate in exactly the same way without sacrificing the additional accountability that results from written policies and procedures that the Commission or DSRO can review and use as the basis for FCM audits.

The requirement that FCMs provide annual training to all finance, treasury, operations, regulatory, compliance, settlement and other relevant employees regarding the segregation requirements for segregated funds, for notices under § 1.12, procedures for reporting non-compliance, and the consequences of failing to comply with requirements for segregated funds, should enhance the integrity of the futures markets by promoting a culture of compliance by the FCM's personnel. The training should help to ensure that FCM employees understand the relevant policies and procedures, that they are empowered and incented to abide by them, and that they know how to report non-compliance to appropriate authorities.

The rules allow FCMs that are not dual registrants (*i.e.,* are not both FCMs and BDs) to follow the same procedures as dual registrants when determining what regulatory capital haircut applies to certain types of securities in which the FCM invests its own capital or customer funds. This change is needed as the SEC has proposed a change for BDs which would permit joint registrants to possibly apply a lower regulatory haircut for certain securities, but which would not be applicable to FCMs that are not dual registrants without this rule. Therefore, the rule should help to ensure that FCMs that are not dual registrants are not competitively disadvantaged and are able to continue applying the same regulatory capital haircuts for such securities as joint registrants.

Last, residual interest is an important aspect of protection for customer funds because it enables the FCM to ensure that it can meet its obligations to each customer without using another customer's funds to do so. All else being equal, the larger the residual interest, the more secure are customer funds. This contributes to confidence in U.S. futures markets and their financial integrity. Adequate residual interest improves the competition between FCMs, inasmuch as FCMs are competing less by transferring risks from customers with deficit funds to customers with surplus funds.

Sound Risk Management

The amendments should promote sound risk management by facilitating market discipline, enhancing internal controls, enabling the Commission and DSROs to monitor FCMs for compliance with those controls, by reducing the risk that an FCM's financial strain could interfere with customers' ability to manage their positions, by requiring FCMs to notify the Commission in additional circumstances that could indicate emerging financial strain, and by requiring senior management to be involved in the process of setting targets for residual interest.

The reporting requirements should enhance market discipline by providing additional information to investors regarding the location of their funds, and the size of residual interest buffer that an FCM targets and maintains in its segregated accounts. This additional information should be valuable to customers selecting an FCM and monitoring the location of their funds deposited with the FCM which should promote market discipline. For example, if an FCM were to establish a low target for residual interest, or maintain a very low residual interest, then market participants are likely to recognize this as a practice that could increase risk to the funds they have on deposit at the FCM. Consequently, customers would likely either apply pressure to the FCM to raise their target, or take their business to a different FCM that maintains a larger residual interest in customer fund accounts. This market discipline should incent FCMs to maintain a level of residual interest that is adequate to ensure that a shortfall does not develop in the customer segregated accounts.

The rules should also enhance FCM internal controls by requiring them to establish a risk management program that includes policies and procedures related to various aspects of how segregated customer funds are handled. For example, FCMs are required to establish procedures for continual monitoring of depositories where segregated customer funds are held, and should have to establish a process for evaluating the marketability, liquidity, and accuracy of pricing for § 1.25 compliant investments.

In addition, documented policies and procedures should benefit the FCM customers and the public by providing the Commission and DSROs greater ability to monitor and enforce procedures that FCMs perform to ensure that the protection of customer funds is achieved, with the effect that the Commission should have a greater ability to address and protect against operational errors and fraud that put customer funds at risk of loss.

Further, through the amendments to § 1.17(a)(4), FCMs will need to manage their access to liquidity so as to be able to certify to the Commission, at its request, that they have sufficient access to liquidity to continue operating as a going concern. This rule should provide the Commission with the flexibility to deal with emerging liquidity drains at FCM s which may endanger customers, potentially prior to instances of regulatory capital non-compliance, allowing customer positions and funds to be transferred intact and quickly to another FCM. This change should promote sound risk management practices by helping to ensure that customers maintain control of their positions without interruption.

The proposed additions to notification requirements established in § 1.12 should enhance the Commission's ability to identify situations that could lead to financial strain for the FCM, which makes it possible for the Commission to monitor further developments with that FCM more carefully and to begin planning earlier for the possibility that the FCM's customer positions may need to be transferred to other FCMs, in the event that the FCM currently holding those positions defaults. Advance notice helps to ensure customers' positions are protected by enabling the Commission to work closely with DCOs and DSROs to identify other FCMs that have requisite capital to meet regulatory requirements if they were to take on additional customer positions, thus facilitating smooth transition of those positions in the event that it is necessary.

Last, FCMs maintaining residual interest in customer accounts is an important aspect of protection for customer funds. While an FCM's residual interest is not exhausted, it may be used to meet the FCM's obligations to each customer without using another customer's funds to do so. All else being equal, the larger the residual interest, the more secure are customer funds. Moreover, these requirements will create incentives for FCMs to monitor their customers' undermargined amounts, thereby enhancing the FCM's risk management. By requiring that senior management set the target for residual interest, and that they conduct adequate due diligence in order to inform that decision, the rule promotes both informed decision making about this important form of protection, and accountability among senior management for this decision, both of which are consistent with sound risk management practices.

Other Public Interest Considerations

As discussed above, the recent failures of MFGI and PFGI, FCMs to which customers have entrusted their funds, sparked a crisis of confidence regarding the security of those funds. This crisis in confidence could deter market participants from using regulated, transparent markets and clearing which would create additional costs for market participants and losses in efficiency and safety that could create additional burdens for the public. The Commission hopes that this rule will not only address the current crisis of confidence, but that it will produce benefits for the public by virtue of avoiding similar defaults in the future.

These amendments are not, however, without costs. First, the most significant costs created by the amendments are those that result from the increased amount of capital that FCMs are required to hold in segregated accounts as part of establishing a target for their residual interest and requiring residual interest for undermargined amounts. Second, additional costs may be created by the amendments that incent FCMs to hold additional capital, and prevent them from holding excess segregated funds overseas. Third, operational costs are likely to arise from amendments that result in the formation of a risk management unit and adoption of new policies and procedures.

Multiple rule changes are expect to incent or require FCMs to increase the amount of residual interest that they maintain in segregated accounts including: (1) Requiring FCMs to establish a target for residual interest that reflects proper due diligence on the part of senior management; (2) disclosing the FCMs' targeted residual interest publicly; (3) requiring them to report to the Commission and their DSROs any time their residual interest drops below that target, and (4) requiring FCMs to hold residual interest large enough to cover their customers' undermargined amounts. In addition by restricting FCMs' ability to withdraw residual interest from segregated accounts and obligating FCMs to report to the Commission and their respective DSRO each time the residual interest drops below the target, the regulations should incent FCMs to hold additional capital, which is also likely to be a significant cost.

When FCMs hold excess customer funds overseas, such funds will likely be held at depositories that are themselves subject to foreign insolvency regimes. These regimes may provide less effective protections for customer funds than those applicable under U.S. law. By prohibiting FCMs from holding some excess customer funds overseas, and thereby reducing investment opportunities for customer funds, the regulations may reduce the returns that FCMs can obtain on invested customer funds.

And last, the requirements related to operational procedures are likely to create significant costs, particularly related to creating and documenting policies and procedures, as well as complying with ongoing training, due diligence, and audit requirements. However, in several cases the implementation costs of the changes should be minor. For example, some proposed requirements should obligate FCMs to provide the Commission and DSROs more regular access to information that FCMs and their depositories are already required to maintain, or in some cases are already reporting to their DSROs. The Commission also anticipates that some of the changes proposed codify best practices for risk management that many FCMs and DCOs may already follow. In such cases, the costs of compliance would be mitigated by the compliance programs or best practices that the firm already has in place. Moreover, in other cases the changes codify practices that are already required by SROs, and therefore would impose no additional costs.

The initial and ongoing costs of the rules for FCMs should vary significantly depending on the size of each FCM, the policies and procedures that they already have in place, and the frequency with which they experience certain events that would create additional costs under the rules. In the NPRM, the Commission estimated that the initial operational cost [599] of implementing the rules would be between $193,000 and $1,850,000 per FCM.[600] And the initial cost to the SROs and DSROs would be between $41,100 and $63,500 per SRO or DSRO. The Commission estimated

[599] The Commission was not able to quantify the costs that would result from increased residual interest held in customer segregated accounts, from increased capital held by the FCM, or from lost investment opportunities due to restrictions on the amount of funds that may be held overseas. The Commission did not have sufficient data to estimate the amount of additional residual interest FCMs are likely to need as a consequence of proposed, the amount of additional capital they may hold for operational purposes, the cost of capital for FCMs, or the opportunity costs FCMs may experience because of restrictions on the amount of customer funds they can hold overseas, each of which would be necessary in order to estimate such costs.

[600] The lower bound assumes an FCM requires the minimum estimated number of personnel hours to be compliant with these new rules and that, when possible, they already have policies, procedures, and systems in place that would satisfy the proposed requirements. The upper bound assumes an FCM requires the maximum amount of personnel hours and do not have pre-existing policies, procedures, and systems in place that would satisfy the proposed requirements. The greatest amount of variation within in the range would depend on the number of new depositories an FCM must establish relationships with due to current depositories that would not be willing to sign the required acknowledgment letter. The lower bound assumes that an FCM does not need to establish any new relationships with depositories. The Commission estimates that the largest FCMs may have as many as 30 depositories, and as a conservative estimate, the Commission assumes for the upper bound that an FCM would have to establish new relationships with 15 depositories.

that the ongoing operational cost to FCMs would be between $287,000 and $2,300,000 per FCM per year.[601] As described below in § 1.52, the Commission did not have adequate information to determine the ongoing cost of the proposed requirements for SROs and DSROs.

On a minor note, the rules also harmonize the definition of leverage ratio reporting with the definition established by a registered futures association.

In the sections that follow, the Commission provides its analysis of cost benefit considerations including comments received, section by section, in light of the relevant 15(a) public interest, cost-benefit considerations.

Consideration of Costs and Benefits Section by Section

Section 1.3(rr)—Definition of ''Foreign Futures or Foreign Options Secured Amount''

The Commission adopted an amendment to § 1.3(rr) replacing the term ''foreign futures or foreign options customers'' with the term ''30.7 customers.'' The former only included U.S.-domiciled customers, whereas the term ''30.7 customers'' includes both U.S.-domiciled and foreign-domiciled customers who place funds in the care of an FCM for trading on foreign boards of trade. This change expanded the range of funds that the FCM must include as part of the foreign futures or foreign options secured amount.

In addition, the definition of ''foreign futures or foreign options secured amount'' was amended so that it is equal to the amount of funds an FCM needs in order to satisfy the full account balances of each of its 30.7 customers at all times. This definitional change is necessary to implement the conversion in § 30.7 from the ''Alternative Method'' to the ''Net Liquidating Equity Method'' of calculating the foreign futures or foreign options secured amount.

Costs and Benefits

These definitional changes determine how much funds are considered part of the ''foreign futures or foreign options secured amount.'' However, the costs and benefits of these changes are attributable to the substantive requirements related to the definitions and, therefore, are analyzed with respect to changes adopted to § 30.7 and discussed below.

Section 1.10—Financial Reports of Futures Commission Merchants and Introducing Brokers

The Commission adopted amendments to § 1.10 revising the Form 1–FR–FCM by establishing a new schedule called the ''Cleared Swap Segregation Schedule'' that is included in the FCM's monthly report, together with the Segregation Schedule and Secured Amount Schedule. The amendments also provide that the Cleared Swap Segregation Schedule is a public document.[602] The Commission also amended the Segregation Schedule and the Secured Amount Schedule to include reporting of the FCM's target for residual interest in the accounts relevant to that Schedule, as well as a calculation of any surplus or deficit in residual interest with respect to that target. The Commission also required each FCM to report to the Commission monthly leverage information.

Costs and Benefits

In the NPRM, the Commission considered the amendments to § 1.10 to have significant benefits to the protection of market participants, namely, customers. The Commission anticipated that continuing the public availability of the Segregation Schedule and the Secured Amount Schedule, with the addition of the Cleared Swaps Segregation Schedule, would be beneficial to customers in assessing the financial condition of the FCMs with whom they choose to transact. The Commission posited that FCMs would have competing incentives to set higher or lower targeted residual amounts, but that public disclosure would enhance the quality of the assessment of a reasonable targeted amount of residual interest. The Commission stated that providing publicly the additional information would permit customers to weigh this consideration, along with considerations of price, in selecting an FCM, benefiting the protection of market participants. The Commission also stated that requiring FCMs to report their leverage to the Commission on a monthly basis would assist the Commission in monitoring each FCM's overall risk profile, which would help the Commission to identify FCMs that should be monitored more closely for further developments that could weaken their financial position, enhancing the protection of market participants.

The Commission could not quantitatively estimate the cost of FCMs having an incentive by public disclosure to hold higher targeted residual amounts in customer segregated accounts. The Commission did consider that qualitatively it expected that costs would be incurred as a result, as a return available to FCMs on restricted investments permissible under § 1.25 would likely be lower than returns on capital not restricted by being held as target residual amounts subject to the investment requirements of § 1.25, and public disclosure would, other factors being equal, give an incentive to FCMs to hold a larger target residual amount.

The Commission estimated quantitatively costs associated with system modifications to produce additional reports for leverage. The Commission did not receive comments regarding its quantitative estimates of those costs or its qualitative analysis that costs would be associated with the amendments to § 1.10, particularly the public disclosure of the Cleared Swaps Segregation Schedule and the changes to the Segregation Schedule and Secured Amount Schedule to include the targeted residual amount. Specifically, the Commission received no comments regarding the assumption that the target residual amount would in fact be higher once publicly disclosed, or as to what forms or costs associated with any additional capital that may be required following disclosure of the target residual amount, if any at all. Nor did the Commission receive comments discussing the quantitative spread difference between § 1.25 investments compared to investments that are not subject to § 1.25. Without comment as to these cost drivers, the Commission is unable to accurately estimate these costs.

The Commission received a comment from NFA to consider an alternative to the regulatory language proposed for leverage ratio reporting to refer to the formulation of leverage established by a registered futures association.[603] The Commission, believing that this alternative would have no detrimental impact on the benefits anticipated from obtaining reporting of leverage, modified the language in the final regulation to conform to the alternative

[601] As above, the lower bound assumes that an FCM requires the minimum estimated number of personnel hours to be compliant and that for event-triggered costs, the FCM bears the minimum number of possible events. The upper bound assumes an FCM requires the maximum number of personnel hours to be compliant. It also assumes an FCM has to notify the Commission pursuant to the proposed amendments in § 1.12 five times per year, and that an FCM withdraws funds from residual interest for proprietary use 50 times per year. The estimate does not include additional costs that would result if FCMs increase the amount of residual interest or capital that they hold in response to the proposed rules, or certain operational costs that the Commission does not have sufficient information to estimate.

[602] The Segregation Schedule and Secured Amount Schedule are already public documents.

[603] NFA Comment Letter at 8 (Feb. 15, 2013).

suggested by NFA. The alternative language in the final regulation will permit the leverage reporting requirement to stay harmonized with NFA's leverage reporting requirement as NFA has indicated it intends to update and refine the formulation, which will continue to provide the Commission with information necessary to monitor FCMs for the protection of market participants.[604]

The Commission received numerous comments regarding the benefits of the public disclosure of the Segregation Schedule, Secured Amount Schedule, and Cleared Swaps Segregation Schedule, and the amounts of the FCM's targeted residual interest.[605] Many commenters reiterated the utility of, and value to, customers of the public availability of the schedules and financial condition information of FCMs.[606] However, several FCMs commented, and FIA expressed concern, that the information would not be useful to customers and would be difficult for customers to understand without understanding all the factors involved in setting a target residual amount.[607] These commenters were concerned that customers may, to their detriment, overweigh the consideration of the targeted residual amount.[608] These comments are discussed in detail at section II.P. above.

The Commission understands the concerns of both sets of commenters but believes that the protection of market participants is enhanced in this circumstance by the greater availability of public information, particularly concerning customer funds, to customers and potential customers. Notwithstanding the concerns of FIA and several FCMs particularly questioning the benefits of the public availability of the targeted residual amount, the Commission believes that public disclosure—and consequent market discipline—is an important counterweight to other FCM incentives with respect to establishing the target. The Commission herein has adopted numerous measures increasing disclosures to customers, believing, on balance, that additional disclosures regarding customer funds in particular to have significant benefits to the protection of market participants. Greater availability of information may also provide additional confidence in the financial integrity of futures markets.

Finally, the Commission, in its consideration of costs and benefits for the amendments to § 1.10, asked questions for particular comments on the costs and benefits of making public daily segregation and secured amount calculations, or other more frequent calculations, and solicited comments on alternatives. Similar to the comments on the public availability of the Segregation Schedule, Secured Amount Schedule, and the Cleared Swaps Segregation Schedule, some commenters supported and other commenters opposed the public availability of daily margin segregation calculations.

The Commercial Energy Working Group noted, generally, that the Commission's proposals for the publication of information would be a cost-effective mechanism to make FCMs more accountable to their customers.[609] The Commercial Energy Working Group posited that additional costs of publication of daily segregation calculations should be nominal.[610] There were no other specific comments on the costs of making publicly available daily or more frequent information. The Commission proposed requiring daily segregation disclosures in the amendments adopted to § 1.55, and the benefits of such disclosures will be further discussed in that section, although the only comment received as to the costs of such publication of information was as discussed herein.

The NFA commented that the Commission should consider the alternative of directing customers to its BASIC system where certain financial information on FCMs would be available in one place, as opposed to requiring FCMs to publish financial information, including the Segregation Schedule, Secured Amount Schedule, and Cleared Swaps Segregation Schedule on their respective Web sites.[611] NFA commented that the Commission should carefully distinguish between categories of information, as those meaningful to all customers which should be readily available, meaningful to regulators but which may be sensitive and subject to misinterpretation if made public, and meaningful to more sophisticated customers that FCMs should be required to provide upon request.[612] The Commission believes enhanced benefits to the protection of market participants and the financial integrity of futures markets, and market discipline, are best achieved by the public availability of the Segregation Schedules, Secured Amount Schedules, and Cleared Swaps Segregation Schedules in their entirety on a monthly basis, but also agrees with NFA's concern regarding the sensitivity of information that may be readily available to regulators but not publicly disclosed. The Commission does not agree that there may be a benefit to distinguishing between categories of customers with respect to public availability of information. The Commission agrees there could be enhanced utility to customers by having schedules provided by the NFA through its BASIC portal as an alternative, however, also notes that NFA could implement this under the rule as adopted so long as the schedules are required to be made publicly available and are not exempt from public disclosure.

Section 1.11 Risk Management Program for Futures Commission Merchants

The Commission adopted new § 1.11 requiring an FCM that carries accounts for customers to establish a risk management unit that is independent from the business unit handling customers or customer funds and reports directly to senior management. In addition, each FCM must establish and document a risk management program, approved by the governing body of the FCM, that, at a minimum: (a) Identifies risks and establishes risk tolerance limits related to various risks that are approved by senior management; (b) includes policies and procedures for detecting breaches of risk tolerance limits, and for reporting them to senior management; (c) provides risk exposure reports quarterly and whenever a material change in the risk exposure of the FCM is identified; (d) includes annual review and testing of the risk management program; and (e) meets specific requirements related to segregation risk, operational risk, and capital risk.

Regarding segregation risk, each FCM must establish written policies and procedures that require, at a minimum: (1) Documented criteria for selecting depositories that would hold segregated funds; (2) a program to monitor depositories on an ongoing basis; (3) an account opening process that ensures the depository acknowledges that funds in the account are customers' funds before any deposits are made to the account, and that also ensures accounts

[604] *Id.*

[605] *See, e.g.,* SIFMA Comment Letter at 2 (Feb. 21, 2013); SUNY Buffalo Comment Letter at 8 (Mar. 19, 2013); Vanguard Comment Letter at 5–6 (Feb. 22, 2013).

[606] *Id.*

[607] *See, e.g.,* FIA Comment Letter at 52 (Feb. 15, 2013); RJ O'Brien Comment Letter at 6 (Feb. 15, 2013).

[608] *Id.*

[609] Commercial Energy Working Group Comment Letter at 2 (Feb. 12, 2013).

[610] *Id.* at 3

[611] NFA Comment Letter at 15 (Feb. 15, 2013).

[612] *Id.* at 16.

are titled appropriately; (4) a process for determining a residual interest target for the FCM that involves due diligence from senior management; (5) a process for the withdrawal of an FCM's residual interest when such a withdrawal is not made for the benefit of the FCM's customers; (6) a process for determining the appropriateness of investing funds in § 1.25 compliant investments; (7) procedures to assure that securities and other non-cash collateral held as segregated funds are properly valued and readily marketable and highly liquid; (8) procedures that help to ensure appropriate separation of duties between those who account for funds and are responsible for statutory and regulatory compliance versus those who act in other capacities with the company (*e.g.,* those who are responsible for treasury functions); (9) a process for the timely recording of all transactions; and (10) a program for annual training of FCM employees regarding the requirements for handling customer funds.

The new § 1.11 requires automated financial risk management controls that address operational risk, and written procedures reasonably designed to ensure that an FCM has sufficient capital to be in compliance with the Act and regulations and to meet its liquidity needs for the foreseeable future.

Costs and Benefits

In the NPRM, the Commission provided a detailed discussion of the significant benefits of the new risk management requirements for FCMs to the protection of market participants and customer funds, sound risk management, and directly as well as by extension, the financial integrity of futures markets. Specifically, the Commission stated that it considered the specific requirements of § 1.11 to reduce the negative impact of conflicts of interest on decision making relating to customer funds, to result in stronger controls which could quickly focus management attention on emerging risks and minimize the risk of a breakdown in control at times of financial stress, and to promote more formal responsibility and require specific accountability up the chain of FCM management and governance for risk controls both generally and specific to customer funds processes and procedures. Documentation requirements for policies and procedures were considered beneficial to promote Commission and SRO oversight of the tools chosen by FCMs in putting the stronger controls in place, although the Commission also determined that permitting flexibility with respect to the manner of the policies and procedures would be beneficial to the efficiency of FCMs in putting the new stronger and more rigorous requirements into practice. The Commission considers the requirements adopted under § 1.11 to be extremely important in eradicating the potential for poor internal controls environments at FCMs, which could be susceptible to fraud or operational error, which in turn could result in losses to customer funds without clear and documented management accountability. Documentation of the criteria for decision making and management determinations with respect to choice of depositories, and other management determinations impacting customer funds such as residual interest and investment choices, as well as requiring periodic review and testing of the risk management program, allows for an iterative process with a clear purpose, the protection of customers and customer funds, transparent to both Commission and SRO examination. Providing clear factors which must be considered by FCMs in their adopted practices, such as selection of depositories, was also considered by the Commission to provide greater clarity to customers with respect to determinations of significant consequence for customers, with a result being likely enhanced market discipline coming from customers evaluating FCMs. In many specific areas, the Commission considered the requirements being adopted to greatly benefit risk management, the protection of market participants and the financial integrity of futures markets as the requirements would necessarily require FCMs to improve internal management communication, internal controls, management accountability, separation of duties, and training of personnel in many respects. The Commission considered that FCMs were already responsible under the Act and existing regulations for the protection of customer funds. The adoption of § 1.11 requires now that FCMs develop written policies and procedures and put programs and controls into practice, to ensure going forward that they have in place consistent and reviewable processes to achieve the required outcomes for protecting customers and customer funds. The Commission, in adopting the rules, was however, cognizant that there would be significant costs involved in compliance with § 1.11, to the extent that for some FCMs these processes and procedures were not already in place or have no equivalent foundation. However, the Commission considered an additional benefit to the requirements to be that there would no longer be a competitive cost advantage to FCMs to not put in place such important measures. Many FCMs are anticipated by the Commission to already have in place strong internal controls and practices similar to what is now specifically being required to be put in place under § 1.11, and those FCMs will not have to bear a competitive disadvantage any longer for doing so with respect to bearing the costs of such practices in order to adequately protect customers. The Commission, cognizant of the significance of its estimates of costs with respect to the requirements, adopted the regulations in a manner that provides FCMs with flexibility in the manner of adopting practices that fulfill the requirements. The Commission did not receive specific comments on its quantitative estimates of the initial and recurring costs of adopting § 1.11.

The Commission did receive comments from several FCMs objecting to the requirements of § 1.11 to require the independence of risk management from the business unit (defined to identify parties responsible for customer business or dealing with customer funds or supervising such lines of responsibility). RCG and Phillip Futures cited the loss of a talent pool available to participate in risk management as a negative consequence of the requirement.[613] Phillip Futures also recommended that the Commission consider as an alternative that internal controls, senior leadership and training programs could suffice in lieu of required separations between risk management and the business unit.[614] Phillip Futures contended that natural conflicts of interest will always exist and can be mitigated by supervisory levels, policies and procedures.[615]

CHS Hedging and RJ O'Brien cited the difficulty of a small or mid-size FCM having a separate unit for risk management personnel, noting it to be impracticable operationally or financially and not cost effective.[616] Frontier Futures generally commented that the costs associated with requiring FCMs to increase risk management standards for the purpose of protecting an FCM's customers from losses caused by fellow customers, would be prohibitive to smaller FCMs being able

[613] RCG Comment Letter at 5 (Feb. 12, 2013); Phillip Futures Comment Letter at 2 (Feb. 14, 2013).

[614] Phillip Futures Comment Letter at 2 (Feb. 14, 2013).

[615] *Id.*

[616] CHS Hedging Comment Letter at 3 (Feb. 15, 2013); RJ O'Brien Comment Letter at 9–10 (Feb. 15, 2013).

to continue operations, and is an area that FCMs were adept at and already have a large incentive to properly manage.[617] FIA asked for clarification that § 1.11 does not require formal structured risk management units, provided that the FCM is able to identify all personnel responsible for required risk management activities in order to comply with the line reporting requirements and independence from supervision by the business unit.[618]

The Commission understands the general concerns of commenters regarding the costs of the requirements of § 1.11, along with the other new provisions being adopted herein by the Commission. The Commission did provide clarity in section II.B. as requested by FIA, which is intended to make clear the amount of flexibility available in complying with the separation of duties of risk management adopted in § 1.11. However, the Commission notes that such separation as a fixed requirement is particularly important to the protection of market participants, as the Commission continues to believe conflicts of interest to be a significant risk to the protection of customer funds during periods of financial or operational stress absent such clear reporting and accountability lines being established.

Section 1.12 Maintenance of Minimum Financial Requirements by Futures Commission Merchants and Introducing Brokers

The changes to § 1.12 alter the notice requirements so that it is no longer acceptable to give ''telephonic notice to be confirmed, in writing, by facsimile.'' Instead, all notices from FCMs must be made in writing and submitted through an electronic submission protocol in accordance with instructions issued or approved by the Commission (currently, WinJammer).

In addition, the amendments to § 1.12 require that if an FCM has a shortfall in net capital, but is unable to accurately compute its current financial condition, the FCM should not delay reporting the under capitalization to the Commission. The FCM must communicate each piece of information (knowledge of the shortfall and knowledge of the financial condition of the FCM) to the Commission as soon as it is known.

The Commission proposed requirements in paragraphs (i), (j), (k) and (l) of § 1.12 to identify additional circumstances in which the FCM must provide immediate written notice to the Commission, relevant SRO, and to the SEC if the FCM is also a BD. Those circumstances were: (1) If an FCM discovers that any of the funds in segregated accounts are invested in investments not permitted under § 1.25; (2) if an FCM does not have sufficient funds in any of its segregated accounts to meet its targeted residual interest; (3) if the FCM experiences a material adverse impact to its creditworthiness or ability to fund its obligations; (4) whenever the FCM has a material change in operations including changes to senior management, lines of business, clearing arrangements, or credit arrangements that could have a negative impact on the FCM's liquidity; and (5) if the FCM receives a notice, examination report, or any other correspondence from a DSRO, the SEC, or a securities industry SRO, the FCM must notify the Commission, and provide a copy of the communication as well as a copy of its response to the Commission. The Commission adopted the proposed additional notification requirements with some changes in response to commenters, narrowing the scope of certain of the new notification requirements.

Last, the Commission adopted a new paragraph (n) of § 1.12 that requires that every notice or report filed with the Commission pursuant to § 1.12 include a discussion of how the reporting event originated and what steps have been, or are being taken, to address the event.

Costs and Benefits

The benefits of requiring that notice to the Commission be given in written form via specified forms of electronic communication not only adapt the rule to account for modern forms of communication, but also reduce the possibility of notification being delayed in reaching appropriate Commission staff. Ensuring that important regulatory notices go directly through electronic systems will result in appropriate staff being alerted as soon as possible and that there are no unnecessary delays to regulatory attention to the notice, which should benefit the protection of market participants and the financial integrity of futures markets, potentially significantly depending on the importance of the issue being addressed.

For example, with respect to the adopted change in § 1.12(a)(2), if an FCM knows that it does not have adequate capital to meet the requirements of § 1.17 or other capital requirements, and is also not able to calculate or determine its financial condition, it is likely that the FCM is in a period of extraordinary stress. In these circumstances, time is of the essence for the solvency of the FCM and for the protection of its customers and counterparties. Therefore, it is important that the Commission, DSRO, and SEC (if the FCM is also a BD) be notified immediately so that they can begin assessing the FCM's condition, and if necessary, make preparations to allow the transfer of the customers' positions to another FCM in the event that the FCM currently holding those positions has insufficient regulatory capital. These preparations help to ensure that the customers' funds are protected in the event of the FCM's default, and that the positions of its customers are transferred expeditiously to another FCM where those customers may continue to hold and control those positions without interruption.

The situations enumerated as adopted in § 1.12(i) and (j) are more specific indicators of potential or existing problems in the customer segregated funds accounts. Notifying the Commission in such circumstances enables it to monitor steps the FCM is taking to address a shortfall in targeted residual interest, or to direct the FCM as it takes steps to address improperly invested segregated funds. In either case, the Commission will be able to closely monitor the FCM's actions, benefiting the continued protection of customer segregated funds.

The Commission also asked questions in the NPRM regarding whether public availability of § 1.12 notices would enhance customer protection, but did not propose to make the notifications public as it did other additional disclosures relevant to customer funds, such as the various segregation schedules. Comments were received both in favor of and in opposition to public availability. One commenter, FHLB, posited that the costs of public availability would be negligible because the reporting would already be done and be done electronically, and the benefit substantial, so that the Commission should require public availability.[619] However, other commenters, including RJ O'Brien and FIA, raised concerns about potential detrimental market impacts on FCMs from the public availability of § 1.12 notices, at odds with FHLB's assertion that FCMs could not be impacted by a ''run on the bank'' scenario and that costs would be negligible, with RJ O'Brien believing a main risk of public availability being precisely a possibly disorderly and erroneous ''run on the bank'' scenario.[620]

[617] Frontier Futures Comment Letter at 2 (Feb. 14, 2013).

[618] FIA Comment Letter at 55 (Feb. 15, 2013).

[619] FHLB Comment Letter at 3 (Feb. 15, 2013).

[620] FIA Comment Letter at 37 (Feb. 15, 2013); RJ O'Brien Comment Letter at 10 (Feb. 15, 2013).

The Commission, although in most circumstances believing there to be substantial benefits to greater availability of public information concerning segregated funds, declined to adopt any requirement for public availability of § 1.12 notices, weighing the comments received, and recognizing an additional benefit to maintaining equivalence of treatment with the SEC for joint registrants, whose similar notices are not made public. The Commission agrees that the risk of the possibility of a disorderly ''run on the bank'' scenario from § 1.12 notices being made immediately public would be too great relative to the benefit of such publication. The possibility of that result could exacerbate a potentially solvable problem at an FCM and not result in the best protection of market participants. The Commission is adopting other types of additional customer disclosures required of FCMs under § 1.55, which it believes are more beneficial to the protection of customers and appropriate to the disclosure purposes than the public availability of § 1.12 notices.

The situations enumerated that were proposed in § 1.12(k) through (l) are circumstances indicating that the FCM is undergoing changes that could indicate or lead to financial strain. Alerting the Commission and relevant SROs in such circumstances will benefit the protection of market participants by fostering their ability to monitor such FCMs more closely in order to ensure that any developing problems are identified quickly and addressed proactively by the FCM with the oversight of the Commission and the relevant SROs. In response to commenters who proposed alternatives, believing the proposals to be overly broad and difficult to clearly comply with, the Commission adopted the requirements but narrowed and provided additional detail for the circumstances under which such notices would be required. The Commission believes the requirements as adopted continue to provide the intended benefits to the protection of market participants.

The proposed § 1.12(m) requirement that the FCM notify the Commission whenever it receives a notice or results of an examination from its DSRO, the SEC, or a securities-industry SRO, was intended to ensure that the Commission is aware of any significant developments affecting the FCM that have been observed or communicated by other regulatory bodies. Such communications could prompt the Commission to heighten its monitoring of specific FCMs, or create an opportunity for the Commission to work collaboratively and proactively with other regulators and self-regulatory organizations to address any concerns about how developments in the FCM's business could affect customer funds.

The Commission adopted § 1.12(m), with changes to address the requests of commenters that the scope of the requirement needed to be narrowed in order to provide the benefit intended without potentially overly burdensome costs. TD Ameritrade, in particular, commented that the volume of its filings with securities regulators would make the § 1.12(m) requirement both overly costly with respect to the intended benefit, and also not likely to result in the benefit as intended.[621] The Commission believes the narrowed language adopted for § 1.12(m) should appropriately address the comment and provide the benefit intended without overly burdensome costs.

The requirement that notifications to the Commission pursuant to § 1.12 include a discussion of what caused the reporting event and what has been, or is being done about the event, would provide additional information to Commission staff that would help them quickly gauge the potential severity of related problems that have been or are developing at the reporting FCM, IB, or SRO. The benefit of requiring the additional information is that it will assist Commission or SRO staff in determining whether the situation is likely to be corrected quickly or to continue deteriorating. Commission staff may be best able to protect market participants with appropriate and timely intervention, with more information received initially regarding how a potential regulatory problem is being handled.

The Commission made quantitative estimates of costs for the amendments to § 1.12 in the NPRM, including the new notice requirements, the additional information required to be included in notices, and monitoring that would be necessary in order for FCMs to submit notices and received no comments specific to those estimates. The Commission estimated the costs of requiring electronic filing of notices for FCMs to be negligible as the filing system is already in place, and received no comment on that estimate. The Commission asked specific questions regarding costs for the additional notice requirements and did not receive any response to such questions from commenters.

[621] TD Ameritrade Comment Letter at 3 (Feb. 15, 2013).

Section 1.16 Qualifications and Reports of Accountants

The adopted changes to § 1.16 require that in order for an accountant to be qualified to conduct an audit of an FCM, the accountant would have to be registered with the PCAOB, and have undergone inspection by the PCAOB. In addition, the amendments also would require that the governing body of the FCM ensure that the accountant engaged for an audit is duly qualified, and specifies certain qualifications that must be considered when evaluating an accountant for such purpose. Finally, the amendments require the public accountant to state in the audit opinion that the audit was conducted in accordance with the auditing standards adopted by the PCAOB.

Costs and Benefits

The Commission adopted amendments to § 1.16 primarily to obtain the benefits of quality control and oversight of accountants and higher standards to apply to certified audits of FCMs, for the greater protection of market participants, and to increase the financial integrity of futures markets. In at least one circumstance of FCM failure, which was an impetus for the package of additional protections to customer funds contained in the Proposal, the experience and quality of the FCM auditor contributed to the audit failure and the inability of an audit to be an effective additional check on the compliance and financial integrity of FCMs and customer funds.[622]

The Commission also considers the newly adopted requirement for the governing body of the FCM to have accountability for assessing auditor qualifications to be an appropriate tool to ensure responsibility for a lack of conflicts, true independence and a quality audit by experienced auditors to be connected back to the FCM's governing body and to be clearly understood to be a responsibility of that governing body. The Commission believes this enhanced accountability will benefit the protection of market participants and promote the financial integrity of futures markets by contributing to ensuring audit quality of FCMs.

In the NPRM, the Commission did not quantitatively estimate costs associated with the amendments to § 1.16, however, it qualitatively considered the

[622] *See* In the Matter of Jeannie Veraja-Snelling, CFTC Docket No. 13–29, available at *http://www.cftc.gov/ucm/groups/public/@lrenforcementactions/documents/legalpleading/enfverajaorder082613.pdf*.

likelihood that PCAOB registered accountants would be expected, all else being equal, to have higher audit fees, thereby incurring additional costs. The Commission requested, but did not receive, quantitative information from commenters to better assess these costs. However, the Commission did receive several comments regarding the proposed amendments to § 1.16 and the Commission altered some of the proposed § 1.16 requirements in response to such comments, as discussed in section II.E. above.

One commenter, the AICPA, proposed that the Commission consider a practice monitoring program, such as the AICPA peer review, as an alternative to the PCAOB inspection requirement.[623] The AICPA stated it did not believe the PCAOB inspection requirement would have the benefit of enhancing audit engagements in situations where inspections are not required (*i.e.,* non-issuer FCMs).[624] The Commission does believe the PCAOB inspection requirement will enhance audit quality over time, particularly as inspections become required for the audits of SEC registered BDs.

However, in considering the practical impediments to registering and becoming inspected by the PCAOB, the Commission made several clarifications in adopting the amendments.[625] Most notably, the Commission extended the compliance date for inspection by the PCAOB until December 31, 2015. As noted above in section II.E., based on the Commission's most recent review, currently there are only seven CPA firms (auditing fifteen FCMs) that would not meet this requirement. Six of those firms are registered with the PCAOB as and indicate that they will be subject to the PCAOB BD inspection program and will presumably receive a PCAOB inspection in the future. Therefore, the Commission is adopting the inspection requirement as proposed but has extended the compliance date to December 31, 2015 in order to provide additional time for accountants to be subject to PCAOB inspections.

The Commission received no comments addressing costs associated with an anticipated increase in audit fees for PCAOB registration. Nor did the Commission receive comment as to any increased costs associated with becoming PCAOB registered. Nonetheless, the Commission believes that currently only one FCM audit firm is not PCAOB registered, and would therefore be required to register to continue to conduct audits of FCMs. Currently, a public accountant that audits less than 49 public issuers is required to pay the PCAOB a registration fee of $500.[626] Annual fees for public accountants with less 200 issuers also are $500 per year.[627] Therefore, any costs associated with registering the one and only existing accounting firm which would not be in compliance, or any firm in the future that will need to register with the PCAOB, will be nominal.

Section 1.17 Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers

Section 4f(b) of the Act provides that no person may be registered as an FCM unless such person meets the minimum financial requirements that the Commission has established by regulation. The Commission's minimum capital requirements for FCMs are set forth in § 1.17 which, among other things, provides that an FCM must cease operating as an FCM and transfer its customers' positions to another FCM if the FCM is not in compliance with the minimum capital requirements, or is unable to demonstrate its compliance with the minimum capital requirements. The Commission proposed to amend § 1.17 by adding a new provision that will authorize the Commission to require an FCM to cease operating as an FCM and transfer its customer accounts if the FCM is not able to certify and demonstrate sufficient access to liquidity to continue operating as a going concern. Additionally, FCMs that are also registered BDs will be allowed to use the SEC's BD approach[628] to evaluate the credit risk of securities that the FCM invests in and assign smaller haircuts[629] to those that are deemed to be a low credit risk.[630] The Commission's amendment to § 1.17(c)(5)(v) allows FCMs that are not dual registrants to use the same approach. Finally, the Commission has adopted amendments revising the period of time that an FCM is permitted to wait before taking an undermargined capital charge from three business days after the call is issued on a customer's account to one business day, and from two business days after the call is issued on a noncustomer or omnibus account to one business day.

Costs and Benefits

In the NPRM, the Commission provided a detailed discussion of the benefits the changes to § 1.17 would provide. Regarding the potential transfer of customer accounts if the FCM was unable to certify and demonstrate sufficient access to liquidity to continue operating as a going concern, several commentators stated that the Commission should not adopt the rule before clearly articulated objective standards were established and exigent circumstances that would give the Commission authority to require an FCM to cease operating were defined. The Commission understands the concerns of commenters regarding the process by which the Commission, or the Director of the Division of Swap Dealer and Intermediary Oversight acting pursuant to delegated authority under § 140.91(6), could require immediate cessation of business as an FCM and the transfer of customer accounts.

However, that same authority currently exists should a firm fail to meet its minimum capital requirement. The Commission believes the ability to certify, and if requested, demonstrate with verifiable evidence, sufficient liquidity to operate as a going concern to meet immediate financial obligations, is a minimum financial requirement necessary to ensure an FCM will continue to meet its obligations as a registrant under the Act. Moreover, because liquidity difficulties will not be made transparent to the FCM's customers pursuant to 1.12, it is especially important that the Commission be permitted to act.

[623] AICPA Comment Letter at 3 (Feb. 11, 2013).

[624] *Id.* at 2–3.

[625] *See* additional discussion at section II.E. above.

[626] *See http://pcaobus.org/Registration/rasr/Pages/AnnualFees.aspx.*

[627] *Id.*

[628] Under the SEC proposal, a BD may impose the default haircuts of 15 percent of the market value of readily marketable commercial paper, convertible debt, and nonconvertible debt instruments or 100 percent of the market value of nonmarketable commercial paper, convertible debt, and nonconvertible debt instruments. A BD, however, may impose lower haircut percentages for commercial paper, convertible debt, and nonconvertible debt instruments that are readily marketable, if the BD determines that the investments have only a minimal amount of credit risk pursuant to its written policies and procedures designed to assess the credit and liquidity risks applicable to a security. A BD that maintains written policies and procedures and determines that the credit risk of a security is minimal is permitted under the SEC proposal to apply the lesser haircut requirement currently specified in the SEC capital rule for commercial paper (*i.e.,* between zero and ½; of 1 percent), nonconvertible debt (*i.e.,* between 2 percent and 9 percent), and preferred stock (*i.e.,* 10 percent).

[629] In computing its adjusted net capital, an FCM is required to reduce the value of proprietary futures and securities positions included in its liquid assets by certain prescribed amounts or percentages of the market value (otherwise known as ''haircuts'') to discount for potential adverse market movements in the securities.

[630] The adoption of the Commission's rule is conditional upon the SEC adoption as final its proposed rule to eliminate references to credit ratings.

Regarding the proposed amendment to § 1.17(c)(5)(v) revising the capital charge (or haircut) procedures for FCMs, the Commission notes that it only impacts FCMs that are not dual registrants. Because FCMs that are not dual registrants do not typically invest in securities that would be subject to reduced haircuts under the SEC's proposed rules, the change should not have a significant impact on the capital requirements for such FCMs. The CFA believes that capital models should be established by the relevant regulatory agencies for use by FCMs or BDs and has serious concerns that internal models used for calculating minimum capital requirements are prone to failure in crisis.[631] The Commission appreciates the CFA's concerns, however, the Commission notes that for securities positions, § 1.17 incorporates by reference the securities haircuts that a BD is required to take in computing its net capital under the SEC's regulations.[632] This is a result of the Commission's determination to defer to the SEC in areas of its expertise, specifically with respect to market risk and appropriate haircuts on securities positions.[633] For FCMs that are dually-registered as BDs, any changes adopted by the SEC to these securities haircuts will be applicable under § 1.17(c)(5)(v) unless the Commission specifically provides an alternate treatment for FCMs.[634] The Commission's amendment merely allows FCMs that are not dual registrants to follow the same rules as those that are dual registrants. This change would harmonize the regulation of FCMs with respect to minimal financial requirements and would place FCMs that are not dual registrants on a more level playing field with those that are dual registrants, which improves the competition between FCMs. The FCMs that use their own internal models will also be subject to review by regulators, including the SEC, SROs, or securities SROs.

Regulation 1.17(c)(5)(viii) required an FCM to take a capital charge if a customer account is undermargined for three business days after the margin call is issued. Likewise, § 1.17(c)(5)(ix) required an FCM to take a capital charge for noncustomer and omnibus accounts that are undermargined for two business days after the margin call is issued. These timeframes were appropriate when the capital rules were adopted in the 1970s, when the use of checks and the mail system were more prevalent for depositing margin with an FCM. They are obsolete, however, in today's markets with the use of wire transfers to meet margin obligations. Therefore, the Commission has amended § 1.17(c)(5)(viii) and (ix) to require an FCM to take capital charges for undermargined customer, noncustomer, and omnibus accounts that are undermargined for more than one business day after a margin call is issued.

FIA stated that while institutional and many commercial market participants generally meet margin calls by means of wire transfers, the proposal creates operational problems because it does not consider delays arising from accounts located in other time zones that cannot settle same day, or ACH settlements, or the requirement to settle or convert certain non-U.S. dollar currencies.[635] FIA also stated that a substantial number of customers that do not have the resources of large institutional customers (in particular members of the agricultural community) depend on financing from banks to fund margin requirements, which may require more than one day to obtain.[636]

RJ O'Brien objected to the proposed amendment because many customers that use the markets to hedge commercial risk still meet margin calls by check or ACH because of the impracticality and costliness of wire transfers to their circumstances.[637] RJ O'Brien stated that in many cases, the costs of a wire transfer would exceed the transaction costs paid by the client to its FCMs, and additionally, that some customers in the farming and ranching community finance their margin calls, which can require additional time to arrange for delivery of margin call funds due to routine banking procedures.[638] RJ O'Brien also stated that if the proposal is adopted, FCMs that service non-institutional clients will struggle to remain competitive and the proposal may result in fewer clearing FCMs and greater systemic risk to the marketplace.[639] RJ O'Brien further stated that a loss of such smaller FCMs will result in fewer options available to these ranchers, farmers and other commercial market participants that wish to hedge their commercial risks.[640]

Other commenters expressed the general concern that the proposal will harm the customers it is meant to protect by requiring more capital to be kept in customer accounts, possibly forcing users to hold funds at FCMs well in excess of their margin requirements.[641] Those commenters argued that such pre-funding could add significant financial burdens to trading as customers find themselves having to provide excess funds to their brokers which could increase their risk with regard to the magnitude of funds potentially at risk in the event of future FCM insolvencies.[642] The commenters generally expressed significant concerns that reducing margin calls to one day will harm many customers as: (1) Many small businesses, farmers, cattle producers and feedlot operators routinely pay by check and forcing them to use wire transfers increases their cost of doing business; (2) clients who make margin calls by ACH payments instead of wire transfers because ACH is cheaper, would no longer be able to do so because there is a one-day lag in availability of funds; and (3) foreign customers would not be able to make margin calls due to time zone differences, the time required to convert certain non-USD currencies, and for whom banking holidays fall on different days.[643]

The CCC stated that the proposed amendment to the capital rule places an undue burden on the FCMs, which will likely result in FCMs demanding that customers prefund trades to prevent market calls and potential capital charges.[644] The CCC also stated that the proposal could result in forced liquidations of customer positions to ensure that the FCM does not incur a capital charge.[645]

FIA and RJ O'Brien suggested alternatives to the Commission's

[631] CFA Comment Letter at 4–5 (Feb. 13, 2013).

[632] Commission Regulations 1.17(c)(5)(v) and 1.32(b) both incorporate 17 CFR 240.15c3–1(c)(2)(vi) by reference.

[633] *See* 43 FR 15072, 15077 (Apr. 10, 1978) and 43 FR 39956, 39963 (Sept. 8, 1978).

[634] *See* discussion adopting § 1.17(c)(5)(vi) for options haircuts, with respect to the applicability of provisions incorporating by reference and referring to the rules of the SEC for securities broker dealers also registered as futures commission merchants. 43 FR 39956, 39964.

[635] FIA Comment Letter at 26 (Feb. 15, 2013).

[636] *Id.*

[637] RJ O'Brien Comment Letter at 3–4 (Feb. 15, 2013).

[638] *Id.*

[639] *Id.*

[640] *Id.*

[641] NPPC Comment Letter at 2 (Feb. 14, 2013); NGFA Comment Letter at 3 (Feb. 15, 2013); NEFI/PMAA Comment Letter at 3 (Jan. 14, 2013); AIM Comment Letter at 15 (Jan. 24, 2013); Amarillo Comment Letter at 1 (Feb. 14, 2013); NCFC Comment Letter at 1 (Feb. 15, 2013); NFA Comment Letter at 12–13 (Feb. 15, 2013); FCStone Comment Letter at 3 (Feb. 15, 2013); Advantage Comment Letter at 1–2 (Feb. 15, 2013); AFBF Comment Letter at 2 (Feb. 15, 2013); CCC Comment Letter at 2 (Feb. 15, 2013); CME Comment Letter at 5 (Feb. 15, 2013); AIM resubmitted the comment letters of Premier Metal Services, NEFI/PMAA, and the ISRI and indicated its support for the recommendations therein (Jan. 14, 2013).

[642] *Id.*

[643] *Id.*

[644] CCC Comment Letter at 2–3 (Feb. 15, 2013).

[645] *Id.*

proposal. Both FIA and RJ O'Brien offered that an FCM be required to take a capital charge for any customer margin deficit exceeding $500,000 that is outstanding for more than one business day.[646] FIA further suggested that if the customer's margin deficit is $500,000 or less, the FCM should take a capital charge if the margin call is outstanding two business days or more after the margin call is issued.[647] RJ O'Brien also stated that the Commission should provide at least a one year period of time for any changes to the timeframe for taking a capital charge for undermargined accounts to be effective, and that the Commission should require futures exchanges to increase their margin requirements to 135% of maintenance margin to reduce the number and frequency of margin calls.[648]

The NFA and FIA stated that if the Commission adopts the amendments regarding residual interest as proposed, then the Commission should consider whether a capital charge for undermargined accounts remains necessary at all because the FCM will have already accounted for an undermargined account by maintaining a residual interest sufficient at all times to exceed the sum of all margin deficits; hence the capital charges related to an undermargined account appear to impose an additional financial burden without any necessary financial protection.[649]

The Commission has considered the comments and is adopting the amendments to § 1.17(c)(5)(vii) and (ix) as proposed. The revised regulation will provide the intended benefits to customers and the marketplace. Commenters have stated that the proposal would increase customer costs by requiring the prefunding of margin calls, which will also potentially expose more customer funds to FCM control. Commenters, however, did not provide any quantitative estimates or provide any substantive analysis in support of their statements. In addition, the Commission notes that much of this argument is based on the assumption that FCMs would not be able to support the additional capital charge through their existing excess capital. In addition, many FCMs utilize a variety of funding sources from which additional capital may be obtained, if required, and therefore costs could vary significantly from one FCM to another FCM. Without quantitative estimates as to how much excess capital FCMs typically maintain, would be required to maintain, or the difference of these costs in relation to aged margin calls between one and three days, the Commission cannot quantify any increase in costs associated with this amendment.

Moreover, the Commission believes that the benefits of the final regulation will enhance the protection of the markets and customers. The Commission notes that the timely collection of margin is a critical component of an FCM's risk management program and is intended to ensure that an FCM holds sufficient funds deposited by account owners to meet potential obligations to a DCO. As guarantor of the financial performance of the customer accounts that it carries, the FCM is financially responsible if the owner of an account cannot meet its margin obligations to the FCM and ultimately to a DCO.

Regulation 39.13(g)(2) requires that a sufficient amount of funds is maintained in an account to cover 99 percent of the observed market moves over a specified period of time. Customers that maintain fully margined accounts are exposed to greater risk to the safety of their funds if some of the accounts of their fellow customers are undermargined. The intent of the proposed amendment is to encourage an FCM to require customers to promptly fund margin deficiencies, or to reserve a sufficient amount of capital to cover the amount of the deficiencies. As a consequence, the risk that a debit balance could develop in a customer's account due to tardy margin call payments would be reduced, and the amount of residual interest that the FCM would need to maintain in the segregated accounts in order to protect against the possibility that such debit balances could cause them to have less that is required in their segregated accounts would also be reduced. This provides benefits for the FCM by reducing the amount of capital that it must contribute to the customer segregated accounts. Customers also benefit by FCMs requiring more prompt payments on undermargined accounts, as it is less likely that FCMs would close out the positions of customers failing to meet margin obligations more quickly, reducing the potential losses that would be passed on to non-defaulting customers in the event of a default of a customer and a default of a clearing member.

Section 1.20 Futures Customer Funds To Be Segregated and Separately Accounted for

The amendments to § 1.20 reorganize the section and alter the substance of the section's requirements in certain places.

The final § 1.20 includes Appendix A and Appendix B, which set forth the Template Letters for the written acknowledgments that FCMs and DCOs, respectively, must obtain from any depository with which they open an account to hold futures customer funds. The rule requires FCMs and DCOs to use the applicable Template Letter to obtain the required acknowledgment before depositing any funds with a depository. Regulation 1.20 also requires FCMs, DCOs, and depositories to file the written acknowledgment with the Commission within three business days of executing the letter, and to update the written acknowledgment within 120 days of any changes to the business name, address, or account numbers referenced in the letter.

The Commission received 15 comment letters related to the proposed acknowledgment letter requirements. Some commenters addressed the costs and benefits associated with these requirements; none of them, however, provided any data to aid the Commission in estimating costs. In the sections that follow, the Commission considers the benefits and costs arising from the adoption of the acknowledgment letter requirements. The Commission also discusses the corresponding comments accordingly.

Benefits

Regulation 1.20(d)(2) requires an FCM to use the Template Letter in Appendix A to obtain a written acknowledgment from any depository that holds futures customer funds. A depository accepting customer funds is required to: (1) Acknowledge that the funds are customer segregated funds subject to section 4d of the Act and the Commission's regulations thereunder; (2) acknowledge and agree that the funds cannot be used to secure any obligation of the FCM to the depository or used by the FCM to secure or obtain credit from the depository; (3) agree to reply promptly and directly to any request from the Commission or the FCM's DSRO for confirmation of account balances or provision of any other information regarding or related to an account; (4) agree that the depository will allow the Commission and the FCM's DSRO to examine the accounts at any reasonable time; and (5) acknowledge and agree that the

[646] FIA Comment Letter at 27 (Feb. 27, 2013); RJ O'Brien Comment Letter at 4 (Feb. 15, 2013).

[647] FIA Comment Letter at 27 (Feb. 15, 2013).

[648] RJ O'Brien Comment Letter at 4 (Feb. 15, 2013).

[649] NFA Comment Letter at 13 (Feb. 15, 2013).

depository will provide the Commission with technological connectivity necessary to permit read-only electronic access to the accounts.

Regulation 1.20(g)(4) requires a DCO to use the Template Letter in Appendix B to obtain a written acknowledgment from any depository that holds futures customer funds. The DCO Template Letter is largely the same as the FCM Template Letter except that: (1) It does not require read-only electronic access; and (2) it does not require the depository to agree to Commission or DSRO examination of customer accounts.

These acknowledgments and commitments would result in important benefits. First, by acknowledging that the funds are subject to the Act and CFTC regulations, the depository recognizes that it must comply with relevant statutory and regulatory requirements related to its handling of those funds. Second, the depository acknowledges that neither the FCM (or DCO) nor the depository is permitted to use customer funds as belonging to any person other than the customer which deposited them, *i.e.,* an FCM or DCO cannot use customer funds to secure its obligations to the depository. Third, the Template Letter for FCMs constitutes written permission by the depository to allow Commission or DSRO officials to examine the FCM's customer accounts at any reasonable time and to provide the Commission with read-only electronic access to those accounts. As a consequence, the Template Letters would enable both the Commission and the DSRO to monitor actual balances at the depository more readily. This would help to ensure that any discrepancy between balances reported by the FCM on its daily customer segregation account reports and balances actually held by the depository would be identified quickly by the Commission or the DSRO. Moreover, with the explicit agreement from the depository permitting the examination of customer segregated accounts, both the Commission and DSRO would be better able to move quickly to resolve a problem.

By requiring FCMs and DCOs to submit copies of the executed Template Letters to both the Commission and, as applicable, an FCM's DSRO, the Commission and DSROs would be better able to act quickly to protect customer funds because the necessary legal permissions will be in place. In addition, the Template Letters provide account information such as account numbers, essential for management of an FCM or DCO bankruptcy situation. Also, requiring that the Template Letters be retained for five years past the time when customer segregated funds are no longer held by a depository helps ensure that proper documentation of all relevant acknowledgments and commitments is in the possession of each party that relies upon the existence of those commitments.

Commenters were generally supportive of adopting the Template Letters. The Depository Bank Group stated that ''the acknowledgment letters will help to facilitate a more efficient process for the establishment and maintenance of customer segregated accounts by FCMs and DCOs and serve to clarify the rights and responsibilities of depository institutions holding customer segregated funds.'' [650] Eurex expressed their appreciation for ''the potential convenience and increases in certainty and transparency that such a standardized approach would likely afford.'' [651] CME stated its support for ''the Commission's efforts to strengthen and standardize the form of acknowledgment letters.'' [652]

Costs

To date, FCMs and DCOs have negotiated each acknowledgment letter with depositories; accordingly, the use of standardized non-negotiable language in the Template Letter may result in cost savings. However, FCMs and DCOs are likely to bear some initial and ongoing costs as a result of the requirement to use the Template Letters. Regarding initial costs, some depositories may not be willing to sign the Template Letter, which would require the FCM or DCO to move any customer funds held by that depository to a different depository, creating certain due diligence and operational costs. These cost concerns were discussed in the comment letters from MGEX and RCG.[653]

In the NPRM, the Commission estimated that the cost of obtaining a new acknowledgment letter from each existing depository is between $1,300 and $4,200.[654] The Commission estimated that FCMs and DCOs would have approximately 1 to 30 depositories each, from which they would need to obtain a new acknowledgment letter. Therefore, the Commission estimated that the cost of obtaining new acknowledgment letters from existing depositories would be between $2,700 and $82,000 per FCM or DCO.[655] In addition, the Commission estimated that the process of identifying new potential depositories, conducting necessary due diligence, formalizing necessary agreements, opening accounts, and transferring funds to a new depository would likely take between three to six months and would likely require support from compliance attorneys, as well as operations, risk management, and administrative personnel. In the NPRM, the Commission estimated that the cost of moving accounts from an existing depository that is not willing to sign the letter would be between $50,000 and $102,000.[656]

There may be additional operational costs associated with any changes that would necessitate updating the letter. The per-entity cost of obtaining the letter from new depositories is likely to be the same as it would be for obtaining the letter from existing depositories (*i.e.,* $1,300 and $4,200). In the NPRM, the Commission estimated that the cost associated with changes that would require the acknowledgment letter to be updated would be between $1,100 and $2,800 per year.[657]

[650] Depository Bank Group Comment Letter at 2 (Feb.15, 2013).

[651] Eurex Comment Letter at 1 (Aug. 1, 2013).

[652] CME Comment Letter at 7 (Feb. 15, 2013).

[653] MGEX Comment Letter at 3 (Feb. 18, 2013) and RCG Comment Letter at 7 (Feb. 12, 2013).

[654] This estimate assumed 10–40 hours of time from a compliance attorney and 10–20 hours from an office services supervisor. The average compensation for a compliance attorney is $85.35/hour [$131,303 per year/(2000 hours per year)*1.3 is $85.35 per hour]; $85.35*10 = $853.47 and $85.35*40 = $3,413.88. The average compensation for an office services supervisor is $40.15/hour [$61,776.00 per year/(2000 hours per year)*1.3 is $40.15 per hour]; $40.15*10 = $401.54 and $40.15*20 = $803.09. These figures were taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

[655] Total figures are taken from previous calculation. ($1,255.01+$4,216.97)/2 = $2,735.99; $2,735.99*1 = $2,735.99 and $2,735.99*30 = $82,079.69.

[656] This estimate assumed one compliance attorney working full-time for 3–6 months, 50–200 hours from an office services supervisor, 80–160 hours of time from a risk management specialist, and 40–60 hours from an intermediate accountant. The average compensation for a compliance attorney is $85.35/hour [$131,303 per year/(2000 hours per year)*1.3 is $85.35 per hour]; $85.35 *40 hours/week*4 weeks/month*3 months = $40,966.54 and $85.35 *40 hours/week*4 weeks/month*6 months = $81,933.07. The average compensation for an office services supervisor is $40.15/hour [$61,776.00 per year/(2000 hours per year)*1.3 is $40.15 per hour]; $40.15*50 = $2,007.72 and $40.15*200 = $8,030.88. The average compensation for a risk management specialist is $65.33/hour [$100,500 per year/(2000 hours per year)*1.3 is $65.33 per hour]; $65.33*80 = $5,226.00 and $268.84*160 = $10,452.00. The average compensation for an intermediate accountant is $34.11/hour [$52,484.00 per year/(2000 hours per year)*1.3 is $34.11 per hour]; $34.11*40 = $1,364.58 and $34.11*60 = $2,046.88. These figures were taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

[657] This assumed 20–50 hours per year from an office manager for operational costs. The average compensation for an office manager is $55.82/hour [$85,875 per year/(2000 hours per year)*1.3 = $55.82/hour]; $55.82*20 = $1,116.38 and $55.82*50 = $2,790.94. This figure was taken from the 2011

Continued

RCG discussed the need to develop policies and procedures as well as train personnel.[658] These costs were considered in the NPRM and are discussed above. MGEX asserted, based on the Commission's estimates in the NPRM, that the costs of using the Template Letters would outweigh the benefits of using them. It did not, however, provide further analysis as to the basis for its conclusion.[659] In the NPRM, the Commission quantified some of the potential costs and only discussed the benefits qualitatively. Consequently, there is no direct comparison between the costs and benefits based on the Commission's estimates in the NPRM.

The Depository Bank Group, FIA, and Schwartz & Ballen expressed concern that the Template Letters' standard of liability provision would shift significant amount of risk onto depository institutions and would likely increase the costs incurred in both monitoring for violations and maintaining customer segregated accounts.[660] As discussed in the preamble, the Commission revised the language in the Template Letters to address these concerns. FCStone and Schwartz & Ballen commented that the proposed restriction on depositories placing liens on customer accounts when there is an overdraft in an account would likely lead to losses to depositories. As discussed in the preamble, the Template Letter clarifies that liens on accounts are permitted only in certain limited circumstances and that a depository may not take a lien against a customer account to cover overdrafts. The final Template Letters do not deny a depository the right to recover funds advanced in the form of cash transfers, lines of credit, repurchase agreements or other similar liquidity arrangements made in lieu of liquidating non-cash assets held in an account or in lieu of converting cash in one currency to cash in a different currency.

The requirement, embedded in the FCM Template Letter, that depositories provide the Commission with read-only electronic access to customer accounts would create certain costs for depositories that would likely be passed onto FCMs. ICI noted that the read-only access requirement would result in a process that might be burdensome.[661] The Commission does not have adequate data to estimate the cost for establishing such a system and no data was provided by commenters to aid the Commission in estimating such costs.[662] The Commission also has decided not to adopt the read-only electronic access requirement for DCOs.[663]

FCStone asserted that the ultimate costs of requiring Template Letters will be borne by customers of FCMs.[664] ICI noted that the costs with respect to a MMMF Template Letter requirements would be borne by all investors in a MMMF and not just by the FCMs.[665] The Commission, however, is unable to forecast how these costs will ultimately be allocated.

Section 1.22 Use of Customer Funds Restricted

Under current regulations, an FCM is not permitted to use one customer's funds to purchase, margin, secure, or settle positions for another customer. However, prior regulations did not specify how FCMs should demonstrate compliance with this requirement. Revised regulation 1.22(c) provides such a mechanism.

Section 1.22(c)(1) defines the undermargined amount for an account. Sections 1.22(c)(2) and (c)(4) require FCMs to compute, based on the information available to the FCM as of the close of each business day, (i) the undermargined amounts, based on the clearing initial margin that will be required to be maintained by that FCM for its futures customers, at each DCO of which the FCM is a member or FCM through which the FCM clears, at the point of the daily settlement (as described in 39.14) that will complete during the following business day for each such DCO (or FCM through which the FCM clears) less (ii) any debit balances referred to in 1.20(i)(4) included in such undermargined amounts.

Moreover, under section 1.22(c)(3), an FCM is required to, prior to the Residual Interest Deadline defined in section 1.22(c)(5), have residual interest in the segregated account in an amount that is at least equal to the computation set forth in section 1.22(c)(2).[666] The amount of residual interest that an FCM must maintain may be reduced to account for payments received from or on behalf of undermargined futures customers between the close of the previous business day and the Residual Interest Deadline.

Section 1.22(c)(5) defines the Residual Interest Deadline. During an initial phase-in period, the Residual Interest Deadline is 6:00 p.m. Eastern Time on the date of the settlement referenced in (c)(2)(i) or (c)(4). On December 31, 2018, which is the expiration of the phase-in period, the Residual Interest Deadline shifts to the time of the settlement referenced in (c)(2)(i) or (c)(4). In the interim, paragraph 1.22(c)(5)(iii) requires Commission staff to solicit further public comment and conduct further analysis in a report (the ''Report'') for publication in the **Federal Register** regarding the practicability of moving the Residual Interest Deadline from 6:00 p.m. Eastern Time on the date of settlement to the time of settlement (or to some other time of day). The Report will discuss whether and on what schedule it would be feasible to move the Residual Interest Deadline, and the cost and benefits of such potential requirements. In addition, staff is instructed to, using the Commission's Web site, solicit public comment and conduct a public roundtable regarding specific issues to be covered by the Report. Paragraph 1.22(c)(5)(iii)(B) provides that the Commission may, taking into account the Report, (1) terminate the phase-in period, in which case the phase-in shall end as of a date established by Commission order published in the **Federal Register**, which date shall be no less than one year after the date of such Commission order, or (2) determine that it is necessary and appropriate in the public interest to propose through rulemaking a different Residual Interest Deadline. In that event, the Commission shall establish by order published in the **Federal Register**, a phase-in schedule.

Costs and Benefits

The requirement in § 1.22(c) benefits customers whose accounts are not undermargined by reducing the risk that their segregated funds would be used to cover a shortfall in customer funds due

SIFMA Report on Management and Professional Earnings in the Securities Industry.

[658] RCG Comment Letter at 8 (Feb. 12, 2013).

[659] MGEX Comment Letter at 3 (Feb.18. 2013).

[660] Depository Bank Group Comment Letter at 2 (Feb. 15, 2013), FIA Comment Letter at 40 (Feb. 15, 2013) and Schwartz & Ballen Comment Letter at 6 (Feb. 15, 2013).

[661] ICI Comment Letter at 5 (Jan. 14, 2013). Although ICI's comments focused on MMMFs, some of the costs they discussed apply generally to read-only access requirements.

[662] The Commission intends to rely primarily on other means of obtaining account information from depositories, and would activate the read-only electronic access only in situations where it was deemed necessary. The Commission will generally seek to obtain account information from the NFA and CME automated daily segregation confirmation system and/or from depositories directly prior to requesting a depository to activate electronic access.

[663] DCOs hold omnibus customer segregated accounts that do not reflect funds attributable to individual clearing members or customers.

[664] FCStone Comment Letter at (Feb. 15, 2013).

[665] ICI Comment Letter at 5 (Jan. 14, 2013).

[666] *See* note 395 above regarding the operation of the requirement in § 1.22(c)(3) where an FCM is subject to multiple Residual Interest Deadlines.

to a ''double default.'' [667] When combined with the reporting requirements in §§ 1.10, 1.32, 22.2, and 30.7, the requirement in § 1.22(c) will further provide the Commission and the public with information that should allow them to determine whether FCMs are using one customer's funds to purchase, margin, secure or settle positions for another customer.[668]

It would be difficult to quantify these benefits reliably. An estimate would depend on the expected value of losses due to a double default (*i.e.,* a default of both a customer and the FCM) which, in turn, depend on the probability of a double default and the magnitude of deficits that would exist in customer accounts compared to the amount of residual interest at the time of the double default. Given the small number of historical examples, it is unlikely that any estimate of probability would be reliable. Moreover, the magnitude of the impact of a loss of customer funds is dependent on an estimate of the amount of funds lost, a number that is also difficult to predict with any reliability, as well as the loss of market confidence (which may be even more important), which is also difficult to estimate reliably.

As discussed above, the Commission has revised the residual interest requirements in the final rule by adopting a point in time approach.[669] As a consequence, once the requirement in § 1.22(c) is phased in, FCMs will have several hours between the close of business on a particular day (the point in time upon which the calculation is based), and the time of day when the requisite amount of residual interest must be held in segregation (that is, the time of the daily settlement). Moreover, during the phase-in period described in § 1.22(c)(5), FCMs will initially have a longer period (until 6:00 p.m. Eastern Time on the following business day) to ensure that the requisite amount of residual interest is held in segregation.

These adjustments to the final rule will avoid the need for FCMs continuously to monitor whether they are maintaining residual interest in their segregated customer accounts that is sufficient to cover the sum of the undermargined amounts in customers' accounts. Instead, FCMs will have to ensure that they are able to cover the sum of the undermargined amounts in customers' accounts by the Residual Interest Deadline. This should significantly reduce the amount of residual interest that an FCM must maintain in segregated accounts on an ongoing basis. In the absence of information regarding what specific changes various market participants might make to their systems and operations in order to expedite margin payments, it is not possible for the Commission to provide an estimate of the costs of such technical changes.

Moreover, the FCM's funding requirement will be reduced to the extent that customers are able to reduce the undermargined amount in their accounts prior to the Residual Interest Deadline. The Commission expects that FCMs will work with customers during the phase-in period to develop the systems and operational patterns that will be necessary to facilitate more prompt margin calls and payments. As a consequence, those FCMs' customers that do not already have the capability to make margin payments before the Residual Interest Deadline may develop that capability, which will further reduce the funding burden borne by FCMs.

The cost associated with maintaining sufficient residual interest to cover undermargined amounts will also depend upon the policies and procedures that FCMs put into place to meet the targeted residual interest requirement set forth in § 1.11. To the extent that the undermargined amount is greater than the targeted residual interest amount that an FCM maintains in its customer accounts, the FCM would have to increase the amount of residual interest it maintains in the customer segregated account by the time it is obligated to make settlement payments to the DCO. Some FCMs may seek to avoid this situation by requiring their customers to pre-fund (*i.e.,* require customers to provide initial margin for a position before the FCM sends the position to a DCO to be cleared, and provide sufficient excess margin to the FCM to reduce any undermargined amount). If the FCM elects to increase the amount of residual interest that it maintains in the customer segregated accounts, this would likely reduce the range of investment options the FCM has for those additional funds and may prompt the FCM to hold additional capital to meet operational needs. Similarly, if the FCM requires additional margin from customers, that will result in capital costs to those customers.

On the other hand, to the extent the FCM would otherwise maintain targeted residual interest (*i.e.,* to the extent the targeted residual interest is greater than or is included within the undermargined amount), then the rule would not create any additional funding costs.

Despite these revisions to the proposed rule, the Commission recognizes that the requirements of final rule § 1.22(c) will create significant additional costs for FCMs and their customers. Developing and implementing the systems and operational changes necessary to facilitate more rapid margin payments will create costs for FCMs and their customers. Those costs are likely to vary significantly across FCMs depending on the infrastructure and operational patterns that each FCM already has in place, and depending on the specifications of the revised systems and operational patterns that FCMs and customers develop in order to facilitate more rapid margin payments.[670]

In addition, the Commission expects that some FCMs may choose to require some customers to increase the amount of margin they maintain in their accounts. This is more likely for those customers who are presently not able to make their margin payments prior to the Residual Interest Deadline. Customers subject to increased pre-funding requirements will bear costs from their cost of capital resulting from pre-funding multiplied by the amount of the increased pre-funding requirement. The cost of capital for each customer depends on the investment strategy of the individual customer, and the amount of increased pre-funding requirement is likely to vary depending on the ability of the customer to respond to margin calls promptly and the FCM's ability to cover the customer's deficits through increased residual interest contributions.[671]

Last, whatever undermargined amounts are not addressed through customer payments prior to the Residual Interest Deadline will have to be covered through increased residual interest contributions from the FCM.

The Commission expects that in order to comply with the requirements of § 1.22(c), FCMs may need to maintain

[667] *See* discussion of double defaults in sections I.D. and II.G.9. above.

[668] *See* the discussion in section II.G.9. above.

[669] *See* the discussion in section II.G.9. above.

[670] In the absence of information regarding what specific changes various market participants might make to their systems and operations in order to expedite margin payments, it is not possible for the Commission to provide an estimate of these costs.

[671] Commenters did not provide, and the Commission does not have, data characterizing the range of investment strategies used by FCM customers, its impact on their cost of capital for additional margin, the extent to which customers will not be able to develop the ability to make more rapid margin payments, or the extent of the margin requirements for those customers. In the absence of this information it is not possible at this time to estimate the additional cost associated with pre-funding requirements that some customers may bear. These are subjects that may be addressed in the Report.

additional residual interest in order to cover the sum of undermargined amounts in customers' accounts that still remain by the Residual Interest Deadline on ordinary trading days, and are likely to acquire and maintain access to additional liquidity that can be accessed rapidly to meet the sum of customers' gross undermargined amounts in a worst-case-scenario. Therefore, in order to estimate the cost of additional residual interest that FCMs will maintain, it is necessary to estimate the amount of additional residual interest that FCMs will need to maintain in their segregated accounts during ordinary trading days, the amount of additional residual interest that will be needed on highly volatile trading days, the ratio of ordinary to highly volatile trading days on an annual basis, the cost of capital for the additional funds that are deposited into residual interest, and the cost to maintain a revolving credit facility or some other source of funding that can be accessed quickly and that is sufficient to cover the projected largest undermargined amount in aggregate for customers' accounts.

As discussed further below, the Commission believes that the point in time approach adopted in this final rule will significantly reduce the amount of additional residual interest that FCMs need to maintain in their segregated accounts on an ongoing basis in order to comply with § 1.22(c).

Several commenters provided estimates of the cost of the ''at all times'' portion of the proposal. FIA estimated that compliance with the ''at all times'' portion of the proposal would require FCMs or their customers to deposit significantly in excess of $100 billion into customer funds accounts beyond the sum required to meet initial margin requirements, and that the annual financing costs for these increased deposits will range from $810 million to $8.125 billion.[672] FIA estimated the highest single day customer margin deficits per FCM would likely be between $196 million to $6.1 billion per FCM, depending on the size and composition of the FCM's customer accounts.[673] Jefferies estimated that it would be required to increase its own residual interest by $15 million (non-peak) or $30 million (peak), respectively.[674] Jefferies also stated that the industry would be required to increase its residual interest by $49 billion (non-peak) or $83 billion (peak) at a cost of approximately $2 billion (non-peak) or $5 billion (peak), respectively.[675] ISDA estimated that the highest single day sum of gross customer margin deficits would likely be approximately $73.2 billion for all FCMs combined, with a long term funding impact of $335 billion.[676]

While the Commission expects that the residual interest requirement will create additional capital costs for most FCMs, the Commission believes that the estimates presented by commenters include certain assumptions that may lead to overstated costs. First, residual interest that is not needed to be pledged as collateral for customers may be invested overnight and during the day in investments that are consistent with the requirements of Commission Regulation 1.25 (''§ 1.25 investments'').[677] The return on residual interest would offset a portion of the cost of funds. That is, the additional funds that FCMs place in residual interest will both incur costs and generate returns for the FCM. Estimates of the effective cost of the additional funds that must be used to increase residual interest must account for both.[678] The returns on § 1.25 investments have the potential to reduce the effective cost of funds.

Second, both FIA and ISDA confound total residual interest with additional residual interest by assuming that the total amount of residual interest that would be required by the proposed rule is equal to the additional amount of additional interest that would be required by the rule. FCMs, in general, maintained some residual interest prior to this rule, and are required to do so to comply with § 1.23.[679] Therefore, it is only the additional residual interest that is necessary because of rule 1.22(c) that is relevant for consideration here.

Third, the Commission agrees with FIA that U.S. Treasury securities are an appropriate proxy for the marginal cost of capital for a low-risk project, such as funds to be placed in residual interest. FIA and Jefferies did not explain why they chose long-dated maturities on the yield curve for their estimates. Presumably, an FCM could borrow funds at a much shorter maturity than five years, for example, a month or less, potentially lowering borrowing costs substantially.

The Commission notes, and discusses further below, that FCMs might mitigate costs by maintaining a credit facility that is sufficient to cover most of their additional residual interest needs on unusually volatile trading days, but that is not used on the majority of trading days. This approach would not only lower the amount of capital needed, but would also reduce the amount of time during which the capital is borrowed. As discussed further below, the Commission is not able to estimate accurately what fees banks would charge. However, the Commission has considered that FCMs would bear an ongoing cost associated with maintaining an open credit facility that is able to provide rapid access to sufficient liquidity to meet any additional residual interest requirements on highly volatile days.

As noted above, several commenters requested the Commission revise the proposal to require that the residual interest calculation be made once a day, specifically by the end of the business day.[680] These commenters suggested an alternative (the ''Industry Commenters' Alternative'') by which, at this point in time, an FCM would be required to maintain a residual interest in its customer funds accounts at least equal to its customers' aggregate margin deficits for the prior trade date. ISDA stated this alternative ''would rationally reduce'' FCMs cost of compliance[681] and that ''[f]or an FCM with robust credit risk management systems, covering end-of-day customer deficits should not be a significant cost.''[682] ISDA also noted that at the end of the day ''typically, all customer calls have been met, and all customer gains have been paid out; all achieved without the FCM having recourse to its own funding resources.''[683] FIA asserted that it would ''achieve the Commission's regulatory goals without imposing the

[672] FIA Comment Letter at 14, 16 (Feb. 15, 2013).

[673] *See* FIA Comment Letter at 2–3 (June 20, 2013).

[674] *Id.* at 8.

[675] *Id.*

[676] *See* ISDA Comment Letter at 4 (Feb. 15, 2013). ISDA used market data for FCMs (November 30, 2012) available at *http://www.cftc.gov/MarketReports/FinancialDataforFCMs/index.htm*.

[677] 17 CFR 1.25.

[678] For example, FIA cited a historical cost of funds of 8.125% in January 1990. At that time, the constant maturity one month Treasury yield was 7.86%, see *http://mortgage-x.com/general/indexes/cmt_tcm_history.asp?f=m*. Thus, using the cost of funds proxy from the commenter, the cost of funds would be closer to 0.365% (calculated as 8.125% − 7.86% + 0.10% (for underwriting and administrative overhead)).

[679] *See* section II.G.10. above.

[680] *See* ISDA Comment Letter at 6 (Feb. 15, 2013); FIA Comment Letter at 23–25 (Feb. 15, 2013); LCH.Clearnet comment Letter at 5 (Jan. 25, 2013); Paul/Weiss Comment Letter at 4–5 (Feb. 15, 2013); RJ O'Brien Comment Letter at 5 (Feb. 15, 2013).

[681] ISDA Comment Letter at 6 (Feb. 15, 2013).

[682] ISDA Comment Letter at 2 (May 8, 2013).

[683] *Id.* ISDA further observed that many FCM customers use custodians across the world, and ''many customers cannot assure payment of their morning FCM call before the end of the New York day,'' and therefore recommended that Commission study the feasibility of reducing the time in which customers have to meet margin calls, if that is ''imperative.'' *Id.* at 3. This will be addressed in the Report.

damaging financial and operational burdens on FCMs, and the resulting financial burdens on customers.'' [684]

ISDA and FIA evaluated the costs associated with requiring FCMs to perform the residual interest calculation once each day at the close of business on the first business day following the trade date.[685] ISDA estimated that ''removing the predictive element of FCM funding requirements'' of the ''at all times'' method in favor of the Industry Commenters' Alternative would permit markets to ''reap the efficiencies of end-of-day accounting,'' [686] thereby reducing the overall cost of compliance with the regulation. ISDA estimated that for exchange-traded futures, the costs associated with the alternative would be the cost of covering the outstanding margin deficits of between 2% and 5% of an FCM's futures customers, and thus that approach would impose only ''incremental funding requirements'' on FCMs.[687] ISDA estimated that the costs of the alternative would be even smaller for cleared swaps, due to the ''more professional'' nature of the market.[688] FIA acknowledged that if FCMs were given until the end of the following business day to ensure that the requisite amount of residual interest was maintained, that approach would eliminate approximately 90–95% of the anticipated additional residual interest that larger FCMs would need to maintain in order to meet an at all times requirement.[689] FIA estimated the financing costs to FCMs of complying with the Industry Commenters' Alternative, and concluded that the costs associated with an at all times residual interest requirement would be approximately ten times the costs associated with the Industry Commenters' Alternative.[690] Finally, the FIA concluded that the Industry Commenters' Alternative would not ''impos[e] damaging financial and operational burdens on FCMs . . . and the resulting financial burdens on customers'' that would result from the at all times approach.[691]

However, the point in time approach adopted in final rule § 1.22(c) gives FCMs until the time of settlement with the DCO (typically the beginning of the following business day for end of day margin calls from the DCO), and also provides an extended phase-in period, during which FCMs have until 6:00 p.m. Eastern Time on the date of such settlement. After the phase-in period, and absent further Commission action following the Report, the final rule does not provide FCMs until the end of the following business day to ensure that the requisite amount of residual interest is held, as would be the case in the Industry Commenters' Alternative. Therefore, the Commission expects that the point in time approach adopted by the Commission will reap much, but not all, of the cost reduction discussed by the industry commenters.[692]

During the phase-in period, FCMs would be subject to Industry Commenters' Alternative (and, thus, all of those cost savings would be realized).

The following analysis assumes that the Commission does not take further action to modify the Residual Interest Deadline after considering the results of the Report. It refers to estimates of ongoing costs and benefits that only would be incurred and realized after the end of the phase-in period.

The Commission expects that the post-phase-in form of § 1.22(c)—with a point in time requirement corresponding to the time of settlement—will achieve some, but not all of the cost reductions associated with Industry Commenters' Alternative. Moreover, during the phase-in period, the Commission anticipates that customers and FCMs will improve their abilities to submit and receive margin payments prior to the FCM's settlement with the DCO, and the Commission will be examining this issue further in the Report. In light of these factors, the Commission believes it is reasonable to suppose that the settlement time approach will significantly reduce—perhaps by 25% to 50%—the amount of additional residual interest that is needed on highly volatile trading days, and by a greater amount on ordinary trading days.

In order to reasonably estimate the potential range of the amount of additional capital that is necessary on highly volatile trading days, the Commission uses ISDA's formulation for the aggregate gross deficit across all customers. ISDA estimated that on high volatility days, the aggregate amount of all customers' gross margin deficits for all FCMs would be equal to 60% of initial margin required by all customers' positions. This estimate is based on an assumption that all of an FCM's customers will be holding positions in the same commodity (or that all commodities in which customers hold positions will move in unison) and that either shorts or longs will predominate.[693] This approach is conservative because it does not take into account diversification effects. For example, while some customers may hold positions in energy products, which may be volatile on a particular day, others may predominately hold positions in interest rates, which may not be volatile on the same day. Moreover, because of the point in time approach adopted by the Commission, FCMs will have time to react to such changes.

The Commission's cost estimates for the amount of additional residual interest that will be required reflect an effort to make a reasonable assumption regarding the potential range of additional residual interest that could be necessary on a volatile trading day. The amount of additional residual interest that could reasonably be expected to be necessary on an ordinary trading day would be much lower because the aggregate of all customers' gross undermargined amounts would be significantly lower on such days. However, commenters only estimated the aggregate of customers' gross undermargined amounts on highly volatile days. They did not estimate or provide data regarding the aggregate of customers' gross undermargined amounts on ordinary trading days. In the absence of either data or estimates from commenters regarding undermargined amounts in customers' accounts on ordinary trading days, the Commission is not able to quantify the amount of additional residual interest needed by FCMs in ordinary trading conditions, but believes that it is significantly less than what is estimated above for volatile trading days.

Commenters did not identify what level of volatility they had in view when offering estimates for additional residual interest that would be necessary for a ''volatile'' trading day. For example, commenters may have had in mind days that were volatile relative to market conditions over the last year or two, or that are volatile relative to the range of all possible outcomes. Context suggests

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[684] FIA Comment Letter at 23 (Feb. 15, 2013). *See also* ISDA Comment Letter at 4 (May 8, 2013).

[685] ISDA Comment Letter at 1–2 (May 8, 2013); FIA Comment Letter at 8–10 (June 20, 2013).

[686] ISDA Comment Letter at 3 (May 8, 2013).

[687] *Id.* at 3–4.

[688] *Id.* at 4.

[689] *See* FIA Comment Letter at 3 (June 20, 2013).

[690] *See* FIA Comment Letter at 8–10 (June 20, 2013). While the rates used by FIA in this exercise may be conservative, and the Commission does not adopt these precise estimates, the exercise is nevertheless illustrative and useful for the purpose of comparing the costs of the at all times approach and the Industry Commenters' Alternative.

[691] *Id.* at 9.

[692] FIA estimated that the Industry Commenters' Alternative would reduce the amount of additional residual interest that is necessary by 90–95% when compared to the at all times approach. *See id.* at 3 (June 20, 2013). *See also* ISDA Comment Letter at 1–2 (May 8, 2013).

[693] *See* ISDA Comment Letter at 4–5 (Feb. 15, 2013).

the latter assumption, since commenters asserted elsewhere that FCMs would have to anticipate market movements in order to maintain sufficient residual interest at all times to cover the sum of customers' undermargined amounts during a highly volatile trading day.[694] Given this, the Commission notes that highly volatile days are only a small fraction of all total trading days, and therefore, the costs associated with additional residual interest required on such highly volatile days would only accrue on a correspondingly small fraction of the total trading days in a given year.

FCMs would, however, bear an ongoing cost associated with maintaining an open credit facility or some other source of funds that is able to provide rapid access to sufficient liquidity to meet any additional residual interest requirements when highly volatile days do occur. The Commission does not have adequate data to estimate the cost of this credit facility. Since it is not feasible to estimate the costs to FCMs to cover the need for additional residual interest between the times of the daily settlement and the end-of-day by obtaining intraday lines of credit from lenders, the Commission has taken a conservative approach, and has assumed, for the sake of quantification, that firms will raise capital sufficient to meet their residual interest needs on highly volatile trading days, and will keep that amount of capital on all days, holding it either in residual interest or in liquid assets that are available to be deposited into segregation.

The Commission is aware that the top-10 largest FCMs (ranked by total amount of customer funds in section 4d(a)(2) segregated accounts and 30.7 accounts as of November 30, 2012) are contained in bank holding companies.[695] Most of these bank holding companies have short-term credit ratings of Moody's P–1, Standard & Poor's A–1, and Fitch F1, while a few have holding companies with P–2, A–2, and F2 ratings. The FCM subsidiary usually derives its credit standing from the bank holding company, with the rating of the FCM subsidiary being often the same or sometimes one credit grade lower than the holding company. To estimate the interest rate that a bank holding company would charge its FCM subsidiary for funding additional residual interest, the Commission is using as a proxy for the costs of these funds the historical average of 30-day AA-financial commercial paper (consonant with the short-term credit ratings of the bank holding companies) minus the yield on the 4-week constant maturity U.S. Treasury bill (to account for the return that FCMs will earn on investments permitted under Regulation 1.25) and is adding 0.10% for underwriting and administrative overhead costs to issue commercial paper.[696] This results in an average cost of funds of 0.35% for the top-10 largest FCMs from July 2001 to July 2013. For the remaining FCMs, the Commission is using as a proxy for the costs of funds the difference between the prime rate and the yield on the 4-week constant maturity U.S. Treasury bill. This results in an average cost of funds of 3.25% from July 2001 to July 2013.[697] The Commission is using historical FCM data from November 30, 2012, even though there is more recent data available, to be consistent with the data ISDA used in the analysis in its comment letter.[698] As of November 30, 2012, there was approximately $147.1 billion in customer funds in section 4d(a)(2) segregated accounts (excluding excess amounts contributed by FCMs).[699] The top-10 FCMs held approximately $111.7 billion in section 4d(a)(2) segregated accounts,[700] and the remaining FCMs held approximately $35.4 billion in section 4d(a)(2) segregated accounts.[701]

ISDA estimated the potential future FCM funding requirement for futures arising from the residual interest proposal by subtracting the existing customer excess. ISDA estimated the futures excess to be between $40–$70 billion and employed the midpoint of this range, $55 billion in its calculations. Using ISDA's point estimate for existing customer excess of $55 billion, the Commission estimates there was, at the top-10 FCMs, (55/177.1) (*i.e.,* 31%) times $111.7 billion or approximately $34.7 billion in existing customer excess in section 4d(a)(2) segregated accounts. Similarly, for the remaining FCMs, the Commission estimates that there was approximately $11 billion in customer excess in section 4d(a)(2) segregated accounts.[702]

First, the Commission performs its calculations for the residual interest projected in the section 4d(a)(2) segregated accounts based on ISDA's assumption that residual interest were required ''at all times.'' For the top-10 FCMs, the Commission subtracts $34.7 billion from $111.7 billion giving approximately $77 billion in required margin. The Commission uses ISDA's suggestion for additional residual interest needed by FCMs and takes 60% of this figure, approximately $46.2 billion, as the estimate for total residual interest needed. As of November 30, 2012, the top-10 FCMs held approximately $6.5 billion in residual interest.[703] Using these figures, the top-10 FCMs would need to fund approximately $39.7 billion in additional residual interest. At a cost of funds of 0.35%, this would result in an annual cost of $139 million for the top-10 FCMs based on the historical costs of funds.

For the remaining FCMs, the Commission subtracts $11 billion (excess margin) from $35.4 billion (balance in 4d(a)(2) accounts) leaving approximately $24.4 billion (required margin in 4d(a)(2) accounts). Again, using ISDA's 60% formulation gives $14.6 billion in total residual interest needed under an at all times approach. The remaining FCMs are holding approximately $3.9 billion in residual interest.[704] Consequently, the remaining FCMs would need to fund approximately $10.7 billion ($14.6 billion–$3.9 billion) in additional residual interest. At a cost of funds of 3.25%, this gives the historical annual cost of approximately $348 million.

For all FCMs, the aggregate annual cost is approximately $487 million (that is, $139 million plus $348 million) to fund the additional residual interest needed by FCMs due to § 1.22 if residual interest were required at all times.

However, these figures change significantly if residual interest is not required until the daily settlement. As

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[694] *See, e.g.,* LCH.Clearnet Comment Letter at 4–5 (Jan. 25, 2013) (noting that ''regardless of the amount of capital an FCM dedicated to continuous compliance, FCMs would still be at risk of a violation''). *See also* CMC Comment Letter at 2 (Feb. 15, 2013); CME Comment Letter at 5 (Feb. 15, 2013); FIA Comment Letter at 4, 13, 15 (Feb. 15, 2013); MFA Comment Letter at 8 (Feb. 15, 2013); NPPC Comment Letter at 2 (Feb. 15, 2013); TD Ameritrade Comment Letter at 4–5 (Feb. 15, 2013).

[695] *See http://www.cftc.gov/MarketReports/FinancialDataforFCMs/HistoricalFCMReports/index.htm.*

[696] The Commission computes the average yields from July 2001 to July 2013. The constant maturity 4-week Treasury yield time series with month observations begins in July of 2001. *See http://www.federalreserve.gov/releases/H15/data.htm.*

[697] The Commission recognizes that there may be some FCMs with weak credit ratings that would have to pay even more than the prime interest rate to secure additional residual interest. *See id.*

[698] The Commission believes that the November 30, 2012 FCM data is typical. Moreover, this permits comparison with other estimates in the comment letter.

[699] *See http://www.cftc.gov/MarketReports/FinancialDataforFCMs/HistoricalFCMReports/index.htm.*

[700] *See id.*

[701] *Id.*

[702] That is, 31% of $35.4 billion and $2.3 billion, respectively.

[703] *See http://www.cftc.gov/MarketReports/FinancialDataforFCMs/HistoricalFCMReports/index.htm.*

[704] *See id.*

noted above, both FIA and ISDA estimate that the residual interest requirement would be reduced by 90% or more if it were required to be present at the end-of-day on the following business day. As discussed above, the Commission estimates that using the point in time approach with morning settlement (rather than end-of-day) will reduce the need for additional residual interest by 25–50%. The midpoint of this range is 37.5%. A reduction of 37.5% (as a consequence of moving to the point in time approach) leaves a multiplier of 62.5%. Multiplying 62.5% by ISDA's estimate (for the at all times approach) of 60% of required margin results in a product of 37.5%.[705] For the top-10 FCMs, the Commission multiplies the $77 billion in required margin by 37.5% giving approximately $28.9 billion in residual interest needed. The top-10 FCMs are currently holding approximately $6.5 billion in residual interest. The top-10 FCMs would be required to fund approximately $22.4 billion ($28.9 billion–$6.5 billion) in additional residual interest. At a cost of funds of 0.35%, this would result in an annual cost of approximately $78 million for the top-10 FCMs.

For the remaining FCMs, the Commission multiplies $24.4 billion (required margin in 4d(a)(2) accounts) by 37.5% giving approximately $9.2 billion. The remaining FCMs are holding $3.9 billion in residual interest.[706] Consequently, the remaining FCMs would be required to fund approximately $5.3 billion ($9.2 billion − $3.9 billion) in additional residual interest. At a cost of funds of 3.25%, this would result in an annual cost of approximately $171 million with current economic conditions. This result in a total annual cost of approximately $249 million to fund the additional residual interest needed by FCMs due to § 1.22 using the Commission's assumption of 37.5% of initial margin needed for residual interest.

As explained above, the final rule does not require FCMs to take this approach. Instead, the Commission believes that firms are likely to manage margin calls to reduce the sum of customers' gross undermargined amounts prior to the time of settlement. They may also mitigate costs by using revolving credit facilities or other temporary sources of liquidity to meet, in part, the need for additional residual interest on volatile trading days. The Commission received comments on the proposed costs and benefits of § 1.22. Several commenters supported the proposal, noting that it would prevent customer funds from being used to subsidize an FCM's obligations, reduce systemic risk, and enhance customer protection, especially in the event of an FCM bankruptcy.[707] In particular, SIFMA stated that the proposal, ''in effect, shifts the costs and burdens of a margin shortfall from customers with excess margin to customers with deficits, where it properly belongs.'' [708] In addition, Vanguard argued that the ''proposed changes correctly shift the risk to customers in deficit and away from any excess margin transferred by other customers.'' [709]

On the other hand, a number of commenters interpreted the ''at all times'' language to require FCMs to continuously calculate their customers' aggregate margin deficits and stated that they believe such a requirement is infeasible.[710] As a result of this interpretation of the proposal, these commenters argued that the proposal would dramatically increase costs and create liquidity issues for FCMs and their customers.[711] Many commenters asserted that the proposal would therefore result in FCMs requiring customers to pre-fund their positions.[712] FHLB cautioned that ''[w]hile it cannot be disputed that a residual interest buffer should lower the risk that an FCM will fall out of compliance with its segregation requirements, there will likely be a real economic cost associated with maintaining whatever residual interest buffers is established by an FCM.'' [713] FHLB further noted that the ''funds maintained by an FCM as residual interest can reasonably be expected to earn less than the FCM's unrestricted funds,'' thus, the proposal ''represents a real cost to FCMs'' that will be passed on to customers.[714] ISDA stated that the proposal will make customers ''self-guaranteeing'' and diminish reliance on the FCM, and that, while this would diminish overall risk of FCM default, it comes at a very significant cost to market participants, market volumes, and liquidity.[715] CHS Hedging observed that ''pre-funding accounts concentrates additional funds at FCMs, which seems to contradict the spirit of the'' customer protection rules.[716]

As noted above, the Commission recognizes that some FCMs may require their customers, or some subset of their customers, to increase the margin they maintain in their accounts in order to cover possible deficits that could materialize during the period of time it would typically take that customer to respond to a margin call. This is particularly the case if and when the Residual Interest Deadline moves to the time of the daily settlement. However, the Commission expects that the number of customers and the amount of additional margin required from those customers would be significantly less than was asserted by some of the commenters because of modifications made to the final rule. As noted above, the final version of the rule allows FCMs to meet the gross sum of the undermargined amounts several hours after (and, during the phase-in period, at the end of the next business day after)

[705] The fact that the reduction of 37.5% (the midpoint of 25% and 50%) multiplied by ISDA's estimate of 60% results in a product that is also 37.5% is coincidental.

[706] *See http://www.cftc.gov/MarketReports/FinancialDataforFCMs/HistoricalFCMReports/index.htm.*

[707] *See, e.g.,* CFA Comment Letter at 5–6 (Feb. 13, 2013); CIEBA Comment Letter at 2–3 (Feb. 20, 2013); ICI Comment Letter at 3 (Jan. 14, 2013); Franklin Comment Letter at 2 (Feb. 15, 2013); Paul/Weiss Comment Letter at 3 (Feb. 15, 2013); SIFMA Comment Letter at 2 (Feb. 21, 2013); Vanguard Comment Letter at 7–8 (Feb. 22, 2013).

[708] SIFMA Comment Letter at 2 (Feb. 21, 2013).

[709] Vanguard Comment Letter at 7 (Feb. 22, 2013).

[710] *See, e.g.* Advantage Comment Letter at 6–8 (Feb. 15, 2013); CMC Comment Letter at 2 (Feb. 15, 2013); CME Comment Letter at 5 (Feb. 15, 2013); FIA Comment Letter at 4, 7–8, 13 (Feb. 15, 2013); LCH.Clearnet Comment Letter at 4–5 (Jan. 25, 2013); MFA Comment Letter at 8 (Feb. 15, 2013); MGEX Comment Letter at 2 (Feb. 18, 2013); Newedge Comment Letter at 2 (Feb. 15, 2013); NPPC Comment Letter at 2 (Feb. 15, 2013; RCG Comment Letter at 3 (Feb. 12, 2013); TD Ameritrade Comment Letter at 4–5 (Feb. 15, 2013).

[711] *See, e.g.,* Advantage Comment Letter at 8 (Feb. 15, 2013) (''The avalanche of buying or selling that this rule will induce contradicts decades of effort by the industry to thwart market panics and provide markets with liquidity and stability.''); CMC Comment Letter at 2 (Feb. 15, 2013) (stating that the proposal ''could create liquidity issues and increase costs for FCMs and end users. Such a decrease in liquidity could be substantial, and limit the number and type of transactions FCMs clear, the number of customers they service and the amount of financing they provide.''); CME Comment Letter at 5–6 (Feb. 15, 2013) (''We believe that this will be a significant and unnecessary drain on liquidity that will make trading significantly more expensive for customers to hedge financial or commercial risks. The liquidity drain will be exacerbated to the extent that the demand for excess margin will increase the costs and limit the activities of market makers.'').

[712] *See, e.g.,* FIA Comment Letter at 17 (Feb. 15, 2013); MFA Comment Letter at 8 (Feb. 15, 2013); Newedge Comment Letter at 2 (Feb. 15, 2013).

[713] FHLB Comment Letter at 3–4 (Feb. 15, 2013).

[714] *Id.* at 4 n.5.

[715] ISDA Comment Letter at 3 (Feb. 15, 2013) (noting that ''[e]ffectively doubling margins will damage futures and swaps markets by destroying the value proposition for many liquidity providers essential to the market's efficiency.''). *See also* ISDA Comment Letter at 2–3 (May 8, 2013) (stating that the proposal would cause customers to pre-fund margin, which ''would remake the cleared swaps and futures markets into one exclusively for 'self-guaranteeing' customers,'' which ''would be damaging to markets by destroying the incentives for continued participation by liquidity providers essential to the markets' efficiency.'').

[716] *Id.*

the undermargined amount is calculated, which is expected to significantly mitigate the need for FCMs to maintain a ''preventative buffer'' of residual interest or additional customer margin that is sufficient to cover customers' potential undermargined amounts in a worst case scenario. Moreover, in cases where customers develop the ability to submit margin payments prior to the Residual Interest Deadline, there will not be any need for additional customer margin on an ongoing basis. It is therefore likely that FCMs will require additional customer margin on an ongoing basis in situations only where (1) a particular customer is not be able to routinely make margin payments prior to the Residual Interest Deadline, and (2) the sum of the undermargined amounts in customers' accounts that cannot be collected before the Residual Interest Deadline is a relatively large compared to the amount of residual interest that the FCM otherwise chooses to maintain.[717]

The Commission does not agree that increased residual interest requirements are contrary to the spirit of the customer protection rules. The rules are intended to provide additional protections to funds held at FCMs, not to reduce the amount of funds held at FCMs. The likelihood of customer defaults leading to an FCM default is reduced. So, additional customer funds at FCMs are better protected with the increased residual interest requirements in place.

Several commenters argued that the costs associated with the proposal would decrease competition between FCMs.[718] In particular, FIA stated that the proposal may force a number of small to mid-sized FCMs out of the market, which will decrease access to the futures markets and increase costs for IBs, hedgers and small traders.[719] In addition, FIA argued that the proposal would significantly impair the price discovery and risk management functions served by the market.[720] JSA argued that the proposal would be ''punitive in a highly competitive environment that already places the midsize operator at a disadvantage to his better capitalized multinational competitors.'' [721] Moreover, JSA stated that the cost of the proposal would result in a higher cost of hedging, which would be prohibitive and prompt agricultural users to walk away from the futures market.[722] The Congressional Committees requested that the Commission consider these effects in drafting the final rule.[723]

Other commenters argued that the proposal would disproportionately burden smaller FCMs and the customers of smaller FCMs.[724] CME asserted that, given this increase in cost, some customers may transfer their accounts to the larger, better-capitalized FCMs to reduce the cost of trading,[725] but that agricultural customers ''likely will not be able to transfer to the larger FCMs because they do not fit their customer profile,'' thereby making these customers bear more of the cost burden.[726] Frontier Futures asserted that many small customers, including most farmers, do not watch markets constantly. Therefore, it would be difficult for them to meet margin calls on a moment's notice, thereby causing FCMs to require significantly higher margins or to liquidate customer positions where margin calls cannot be immediately met.[727] Frontier Futures also asserted that the proposal ''may force a number of small to mid-sized FCMs out of the market,'' making it more expensive, if not impossible, for IBs and small members to clear their business, removing ''significant capital from the futures industry,'' and ''reducing stability to the markets as a whole.''[728] RJ O'Brien stated that the proposed residual interest requirement is impractical because many farmers and agricultural clients still use checks and ACH to meet margin calls.[729] RJ O'Brien also stated that if the proposal is adopted, FCMs that service non-institutional clients will struggle to remain competitive and the proposal may result in fewer clearing FCMs and greater systemic risk to the marketplace.[730] Similarly, CME stated that the proposed residual interest requirement would lead to consolidation among FCMs, which will ''actually *increase*[ ] systemic risk by concentrating risk among fewer market participants.'' [731]

The Commission recognizes that smaller FCMs may have more difficulty than large FCMs in absorbing the additional costs created by the requirements in § 1.22. In general, it is likely that smaller FCMs have a larger percentage of customers who do not have requisite personnel or systems to receive margin calls and make margin payments in a matter of hours, thus creating a disproportionate need for pre-funding or additional residual interest at smaller FCMs. Smaller FCMs are also likely to have higher borrowing costs than larger FCMs, so the impact of obtaining additional capital to meet increased residual interest needs may be more significant for them. If increased costs force some smaller FCMs out of the market, it is possible, though not certain, that smaller customers could have difficulty finding alternative FCMs to service their needs. However, as noted above, the Commission believes that the changes made to § 1.22(c), and the extended phase-in period, in the final rule substantially reduce the costs to FCMs and their customers when compared to the proposed version of the requirement. By reducing the costs, these changes have also reduced some of the associated burdens that would potentially be disproportionately borne by smaller FCMs. The Commission does not agree that a reduced number of FCMs would necessarily reduce competition in a way that impacts the price of services. Any increases in costs to customers are more likely the result of increased costs to the FCM that are passed on to customers, which are the costs that have been mitigated by changes to the final rule. Moreover, the Commission is cognizant of the cost of an FCM failure where customers suffer a loss of segregated funds, both in terms

[717] The Commission expects that this would happen on normal trading days. On highly volatile trading days, the Commission expects that customers' gross undermargined amounts would likely be covered by residual interest acquired through a line of credit or credit facility, as discussed above, rather than through customer pre-funding since the costs of the former are likely to be considerably less than the costs of the latter.

However, the Commission does not, at this time, have data regarding individual customers' historical gross undermargined amounts and therefore does not have adequate information to estimate the number of FCM and customer combinations where additional customer margin would be required on an ongoing basis.

[718] *See, e.g.,* CHS Hedging Comment Letter at 2 (Feb. 15, 2013); CME Comment Letter at 6 (Feb. 15, 2013); FIA Comment Letter at 17 (Feb. 15, 2013); Frontier Futures Comment Letter at 3 (Feb. 15, 2013); Jefferies Comment Letter at 7 (Feb. 15, 2013); JSA Comment Letter at 1–2 (Feb. 15, 2013); NCFC Comment Letter at 2 (Feb. 15, 2013); NIBA Comment Letter at 1 (Feb. 15, 2013).

[719] *See* FIA Comment Letter at 17 (Feb. 15, 2013).

[720] *See id.* at 4, 17.

[721] JSA Comment Letter at 1 (Feb. 15, 2013).

[722] *Id.* at 2.

[723] *See* Congressional Committees Letter at 1 (Sept. 25, 2013).

[724] *See, e.g.,* CME Comment Letter at 5–6 (Feb. 15, 2013); FCStone Comment Letter at 3 (Feb. 15, 2013); Global Commodity Comment Letter at 1 (Feb. 13, 2013); Randy Fritsche Comment Letter at 1 (Feb. 15, 2013); JSA Comment Letter at 1 (Feb. 15, 2013); NCBA Comment Letter at 2 (Feb. 15, 2013); NCFC Comment Letter at 2 (Feb. 15, 2013); RJ O'Brien Comment Letter at 3 (Feb. 15, 2013); ICA Comment Letter at 1–2 (Feb. 15, 2013); TCFA Comment Letter at 2 (Feb. 15, 2013).

[725] CME Comment Letter at 6 (Feb. 15, 2013).

[726] *Id.*

[727] *See* Frontier Futures Comment Letter at 2–3 (Feb. 14, 2013).

[728] *Id.*

[729] RJ O'Brien Comment Letter at 3 (Feb. 15, 2013). *See also* ICA Comment Letter at 1–2 (Feb. 15, 2013).

[730] RJ O'Brien Comment Letter at 3 (Feb. 15, 2013).

[731] CME Comment Letter at 6 (Feb. 15, 2013) (emphasis in original).

of costs to the customers who lose such funds (or, if such funds are ultimately recovered, the use of such funds) as well as the industry-wide cost associated with a loss in confidence in the safety of customer funds. These costs support the importance of increasing the safety of the system. Moreover, the Commission will closely review these issues as part of considering the Report.

The Commission disagrees with the comments that there would be a consolidation of FCMs that would cause the rule to have a net effect of increasing systemic risk. Instead, the Commission expects that the overall effect of the final rule will be to significantly reduce systemic risk. For example, as noted by CIEBA,[732] the residual interest requirement will likely reduce systemic risk by enabling FCMs to ensure that they can meet all customer obligations at any time without using another customer's funds to do so. Moreover, larger, well-capitalized FCMs are more likely to be able to absorb losses than less well-capitalized FCMs. To the extent that FCMs that are affiliated with large financial institutions take on additional business as a result of a potential reduction in the number of FCMs, the increase in risk to these financial institutions is expected to be small relative to their existing risk and to not materially increase the systemic risk associated with these financial institutions. Finally, some of the costs that commenters asserted could lead to a reduction in the number of FCMs under the proposed rule have been mitigated by changes to the final rule.

Several commenters also observed that the proposal would mark a significant departure from current market practice and could have a material adverse impact on the liquidity and smooth functioning of the futures and swaps markets.[733] The Commission has chosen to provide an extended phase-in period for the requirement in § 1.22(c) and therefore does not expect that smooth functioning of the futures and swap markets will be disrupted. If customers withdraw from the futures and swap markets as a consequence of the additional costs, liquidity could be negatively affected. However, the Commission believes that by allowing FCMs several hours (and, during the phase-in period, until the end of the next business day) after customer accounts become undermargined to ensure that the requisite amount of residual interest is on deposit, the costs associated with the requirement have been mitigated, which reduces the likelihood that customers will be prompted to withdraw from the markets due to related expenses.

The Commission also considered several additional alternative proposals raised by the commenters.

Newedge suggested that the Commission consider less costly alternatives to the proposed rule, such as allowing the FCM ''to count guaranty fund deposits with [DCOs] as part of their residual interest'' or limiting the residual interest amount that an FCM must carry to only a limited number of its largest customers.[734] The Commission believes, however, that the latter proposal is not consistent with the statutory requirement that ''one customer's funds may not be used to margin, guarantee, or pay another customer's obligations'' and therefore did not adopt this suggestion. Regarding the former alternative, guarantee funds held at the DCO are a critical part of the waterfall that covers losses in the event of an FCM's default. One of the primary purposes of the customer protection regime is to protect customers from the risk of losses in the event that their FCM defaults. Using funds that may be used to cover the FCM's proprietary losses (*i.e.,* the guarantee fund) to guarantee customers' funds could expose customer funds to the FCM's losses in a double default scenario. The Commission, therefore, does not believe that this alternative is consistent with the goals of the customer protection regime.

Frontier Futures suggested that firm firewalls be put in place between customer funds and an FCM's proprietary funds in the form of approval by an independent agency for an FCM to transfer customer funds.[735] Frontier Futures also recommended that FCMs ''do their proprietary trading through another FCM thereby engaging the risk management of a third party.'' [736] The Commission has chosen not to require FCMs to seek external approval before pulling excess residual interest out of a customer segregated account, or to conduct their proprietary trading through another FCM. The Commission expects that the requirements in § 1.23 will accomplish some of the same benefits—ensuring that FCMs only withdraw significant portions of excess residual interest when they have adequate information to ensure that it is truly excess and that senior management is accountable for such decisions—with greater efficiency and less operational costs. Internal verification of residual interest balances and obtaining signatures from individuals inside the organization is likely to be considerably faster, and therefore more efficient and less costly.

Regarding the second proposal, it is not clear how the commenter expected the third party FCM to augment the first FCM's risk management or what specific type of risk would be addressed by such an arrangement. A third party FCM would be responsible for collecting margin and for making payments to the DCO for positions related to the first FCM's proprietary positions. But this arrangement would not help protect customers at the first FCM from ''fellow customer risk.''

Finally, some commenters requested that the Commission refrain from adopting the proposal until it conducts further analysis with the industry regarding the costs and benefits of such proposal.[737] Further, the Congressional Committees requested that the Commission weigh the costs and benefits of the final rule, and in particular ''carefully consider the consequences of changing the manner or frequency in which 'residual interest' . . . is calculated.'' [738] The ''point in time'' approach adopted by the Commission in this final rule and the extended phase-in period will significantly reduce (as compared to the proposed rule) the amount of additional residual interest that FCMs need to maintain in their segregated accounts on an ongoing basis in order to comply with § 1.22(c). As noted above, the final rule will mitigate some, though not all of the costs associated with pre-funding obligations that commenters expressed concern about, while simultaneously ensuring that the statutory obligations are met and that the corresponding protection from ''fellow customer risk'' is achieved.

In light of these concerns and in response to the commenters' requests, the Commission is directing staff to, within thirty months of the publication

[732] *See* CIEBA Comment Letter at 3 (Feb. 20, 2013).

[733] *See, e.g.,* MGEX Comment Letter at 2 (Feb. 18, 2013); AIMA Comment Letter at 3 (Feb. 15, 2013); CMC Comment Letter at 2 (Feb. 15, 2013).

[734] Newedge Comment Letter at 3 (Feb. 15, 2013). *See also* RJ O'Brien Comment Letter at 5 (Feb. 15, 2013).

[735] *See* Frontier Futures Comment Letter at 3 (Feb. 14, 2013).

[736] *Id.*

[737] *See, e.g.,* AIMA Comment Letter at 3 (Feb. 15, 2013); CCC Comment Letter at 2–3 (Feb. 15, 2013); CHS Hedging Comment Letter at 2–3 (Feb. 15, 2013); CME Comment at 5–7 (Feb. 15, 2013); AFBF Comment Letter at 2 (Feb. 15, 2013); Jefferies Comment Letter at 9 (Feb. 15, 2013); JSA Comment Letter at 1–2 (Feb. 15, 2013); NCBA Comment Letter at 2 (Feb. 15, 2013); NGFA Comment Letter at 5 (Feb. 15, 2013); NIBA Comment Letter at 1–2 (Feb. 15, 2013); TCFA Comment Letter at 2 (Feb. 15, 2013); AFMP Group Comment Letter at 1–2 (Sept. 18, 2013).

[738] Congressional Committees Comment Letter at 1 (Sept. 25, 2013).

of this release, solicit further public comment, hold a public roundtable, and conduct further analysis regarding the practicability of moving the Residual Interest Deadline from 6:00 p.m. Eastern Time on the date of settlement to the time of settlement (or to some other time of day). The Report should include an analysis of whether and on what schedule it would be feasible to move the Residual Interest Deadline, and the costs and benefits of such potential requirements. All of this will take place well before the expiration of the phase-in period. The Commission will consider the Report and within nine months after the publication of the Report may take additional action regarding the phase-in period by Commission order and may change the Residual Interest Deadline by rulemaking.

Section 1.23 Interest of Futures Commission Merchants in Segregated Funds; Additions and Withdrawals

Revised § 1.23 places new restrictions regarding an FCM's withdrawal of residual interest funds not for the benefit of customers. As adopted, an FCM cannot withdraw any residual interest funds not for the benefit of customers unless it has prepared the daily segregation calculation from the previous day and has adjusted the segregation calculation for any activity or events that may have decreased residual interest since the close of business the previous day. In addition, an FCM is permitted to withdraw more than 25 percent of its residual interest for purposes other than the benefit of customers within one day only if it: (1) Obtains a signature from the CEO, CFO or other senior official as described in § 1.23(c)(1) confirming approval to make such a withdrawal; and (2) sends written notice to the Commission and the firm's DSRO indicating that the requisite approvals from the CEO, CFO or other senior official have been obtained, providing reasons for the withdrawal, listing the names and amounts of funds provided to each recipient, and providing an affirmation from the signatory indicating that he or she has knowledge and reasonable belief that the FCM is still in compliance with segregation requirements after the withdrawal.

In addition, if the FCM drops below its target threshold for residual interest because of a withdrawal of residual interest not for the benefit of customers, the next day it must either replenish residual interest sufficient to surpass its target, or if senior leadership believes that the original target is excessive, the FCM may revise its target in accordance with its policies and procedures established in § 1.11. The amendments to § 1.23 were also made for Cleared Swaps and foreign futures at § 22.17, and § 30.7(g) respectively, and the costs and benefits considerations of those amendments are considered to be substantively the same.

Costs and Benefits

Restrictions on withdrawals of residual interest provide the benefit of an additional layer of protection for customer funds contained in segregated accounts. An FCM may withdraw residual interest as long as it always maintains sufficient FCM funds in the account to cover any shortfall that exists in all of its customers' segregated accounts. However, as a practical matter, the segregation requirements fluctuate constantly with market movements, and customer surpluses or deficits also fluctuate depending on the speed with which customers meet margin calls. As a consequence, the amount of residual interest an FCM has in a segregated account similarly fluctuates. A sufficient amount of residual interest to cover deficiencies in customers' accounts at one point in time may appear insufficient by the next settlement cycle in extreme market conditions. Therefore, it is important for an FCM to maintain sufficient residual interest to cover both current deficiencies in customer accounts as well as any additional deficiencies that could develop over a relatively short period of time. Restrictions on withdrawals of residual interest help to ensure that the FCM maintains a stable base of residual interest and not withdraw it for other liquidity needs when doing so may result in jeopardizing customer funds in the segregated account if market conditions change quickly.

Prohibiting any withdrawal of residual interest until the customer segregation account calculations are complete for the previous day and requiring the FCM take into account any subsequent developments in the market or the account that could impact the amount of residual interest before withdrawing funds protects customer funds by reducing the likelihood that lack of current information could cause the FCM to make a withdrawal from customer funds that is large enough to cause the account to fall below its segregated funds requirement.

The adopted amendments require FCMs to take several steps in order to remove more than 25 percent of their residual interest in a single day. Large, single-day withdrawals of the FCM's residual interest in the customer segregated account could be an indication of current or impending capital or liquidity strains at the FCM. The additional steps ensure that senior management is knowledgeable of and accountable for such withdrawals, that no shortfall in the customer segregated accounts is created by the withdrawals, and that the CFTC and DSRO are both alerted to allow them to monitor the FCM and its segregated accounts closely over subsequent days and weeks. Additional monitoring will help to ensure that the integrity and sufficiency of the FCM's customer segregated accounts are protected. In addition, notifying the CFTC and DSRO gives both an opportunity to ask questions about the FCM's reasonable reliance on its estimations of the adequacy of its funds necessary to meet segregation requirements. Such questions may give the Commission and DSRO comfort that the transaction does not indicate any strain on the FCM's financial position, or conversely, may raise additional questions and alert the CFTC and DSRO to the need for heightened monitoring of the FCM or further investigation of its activities. The amendment also adds protection by ensuring that the Commission has records regarding the name and address of parties receiving funds from any withdrawal of residual interest in segregated funds not for the benefit of customers. Also, requiring an FCM to replenish its residual funds the following day any time a withdrawal causes it to drop below the FCM's target amount helps to ensure that residual interest is not used by the firm to address liquidity needs in other parts of the firm unless those needs are very short-term in nature (*i.e.,* less than 24 hours). Finally, the amendments are consistent with rules imposed on all FCMs by the DSROs.

In the NPRM, the Commission qualitatively analyzed that the amendments to § 1.23 would create costs for FCMs and quantitatively estimated costs associated with obtaining management approvals for withdrawals exceeding 25 percent of the prior day's residual interest. The restrictions on withdrawals were anticipated to potentially prevent an FCM from withdrawing funds quickly in order to meet certain operational needs, or to take advantage of specific investment opportunities, and in general could be expected to result in an FCM needing to hold additional capital outside of residual interest in order to meet operational needs.

The Commission did not receive comments on its quantitative estimates of the costs of obtaining management approvals. However, the Commission did receive comments on its qualitative analysis of costs, and also received comments that the use of the prior day's actual residual interest as the amount applicable to the restriction would provide a disincentive to FCMs holding additional funds at DCOs as residual interest, which commenters posited as less beneficial to the protection of customers. Several commenters, including FIA and Jefferies suggested the Commission utilize the targeted residual amount as the threshold for notifications and withdrawal restrictions, in order to not discourage FCMs from holding additional funds as residual interest.[739] FIA suggested that the qualitative analysis of the costs was not sufficient and that the amendments would impose a tremendous operational and financial burden on the industry, requiring the development and implementation of entirely new systems to assure compliance and detrimentally impacting liquidity.[740] The Commission believes however, that this comment is not directed to the withdrawal restrictions as adopted or the necessity to replenish the targeted residual interest amount, but instead directed at requirements with respect to holding residual interest sufficient to cover customer under margined amounts, which is addressed separately in the cost benefit considerations for § 1.22.

Jefferies provided some quantitative estimates of the costs of holding increased residual interest, specifically positing that even a five percent increase in residual interest could cost Jefferies $500,000.[741] FIA posited that FCMs currently may increase residual interest day-to-day for expected events, including during stressed market conditions and for the purpose of currency facilitation, and to impose withdrawal restrictions based on the actual, as opposed to targeted, excess would reduce the actual likelihood of FCMs infusing of additional proprietary funds in those circumstances.[742]

The Commission understands that establishing a target and holding residual interest does have costs, but disagrees with the underlying assumptions of the cost estimates provided by Jefferies. The cost estimates provided by Jefferies imply the cost of holding additional residual interest is the same as the FCM's cost of capital. However, the cost considered for the amendments should be the difference in what can be earned by more conservative investments permitted for segregated funds versus otherwise if held by FCMs as unrestricted capital, unless the targeted residual amount exceeds an FCM's minimum net capital requirement. The costs of holding some amount of residual interest is an existing cost of doing business as an FCM because, practically speaking, there is a need to hold some amount of residual interest on a day to day basis to remain in segregation compliance. Significant minimum net capital requirements exist for FCMs, currently. Unless the targeted residual interest in fact exceeds a firm's minimum net capital requirement, the requirement to hold capital as residual interest in customer segregated accounts is not a separate additional capital requirement. Therefore, Jefferies' contention with respect to the costs of the withdrawal restrictions being represented by the costs of additional required capital for a firm is not persuasive. Such cost is only an incremental cost of the newly adopted requirements of establishing or publicizing targets or imposing withdrawal restrictions. Further, the withdrawal restrictions adopted require a one day delay, and management approval and regulatory notifications. These are not absolute restrictions to the withdrawal of residual interest funds and the costs considered and incentives or disincentives created should not be analyzed as if they were. Even the replenishment requirement adopted, with respect to withdrawals not for the benefit of customers resulting in residual interest dropping below the target for residual interest, in order to maintain the targeted residual amount, provides an FCM with the flexibility to reassess the target as an alternative. However, all these processes must be transparent to the Commission, including the FCM's management's accountability for such processes.

The Commission is not persuaded that the reduced incentives to provide added funds to residual interest would be a reason to adopt an alternative of using the targeted residual as opposed to the actual prior day residual as the measurement for the 25 percent withdrawal restriction, which is a requirement for notice and approval, and therefore, not an absolute restriction. The rationales for adding funds specific to certain anticipated events could just as easily provide a clear basis for the management approval and notification process required for the subsequent withdrawal of funds after those circumstances, as opposed to making them unlikely to occur at all. The benefits of clear management accountability and regulatory transparency with respect to such practices and related operational risks (such as potentially more volatile cash flows through segregated accounts not for the benefit of customers) would still be obtained.

Section 1.25 Investment of Customer Funds

Regulation 1.25 sets forth the financial investments that an FCM or DCO may make with customer funds. Among other things, § 1.25 permits FCMs and DCOs to use customer funds to purchase securities from a counterparty under an agreement for the resale of the securities back to the counterparty. This type of transaction is referred to as a reverse repurchase agreement and in effect, is a collateralized loan by the FCM to its counterparty. Regulation 1.25(b)(3)(v) establishes a counterparty concentration limit, prohibiting FCMs and DCOs from using more than 25 percent of the total funds in the customer segregated account to conduct reverse repos with a single counterparty. The Commission's amendment expands the definition of a counterparty to include additional entities under common ownership or control. Thus, as adopted, the 25-percent counterparty concentration limit for reverse repurchase agreements applies not only to a single counterparty, but to all counterparties under common control or ownership. The additional adopted changes to § 1.25 are conforming amendments proposed in order to harmonize this section with other amendments adopted in this release.

Costs and Benefits

In the NPRM, the Commission discussed how the expansion of the concentration limitation to counterparties under common control or ownership is consistent with the original intention of the concentration limitation, which was to mitigate the potential losses or disruptions due to the default of a counterparty. The Commission has elected to adopt the amendment as a further protection to customer funds, because a default by one counterparty that is under common control or ownership, may adversely impact all of the counterparties to the reverse repurchase agreement and hence adversely impact the FCM and the funds it holds for its customers. Because the amendment incorporates the Commission's interpretation of the existing rule, it does not alter the rule's meaning and, therefore, the amendment does not create any incremental costs or benefits. Likewise, the additional

[739] *See* FIA Comment Letter at 29 (Feb. 15, 2013); Jefferies Comment Letter at 4 (Feb. 15, 2013).

[740] FIA Comment Letter at 13 (Feb. 15, 2013).

[741] Jefferies Comment Letter at 5 (Feb. 15, 2013).

[742] FIA Comment Letter at 27–29 (Feb. 15, 2013).

changes to § 1.25 are conforming amendments proposed in order to harmonize this section with other amendments proposed in this release, and, therefore, do not create any incremental costs or benefits.

Because § 1.25 sets forth the financial investments that an FCM or DCO may make with customer funds, several members of the public [743] expressed their general opinions regarding the investment and handling of customer funds by FCMs and DCOs. In general, all of the commenters supported the position that FCMs and DCOs only be allowed to make safe/non-speculative investments of customer funds and not be allowed to add risk that customers are unaware of or do not sanction. In addition, some of the commenters [744] proposed that the Commission amend its regulations to provide commodity customers with the ability to ''opt out'' of granting FCMs the ability to invest customer funds (including hypothecation and rehypothecation); seven [745] of which further requested that the Commission mandate that an FCM cannot prevent a customer who so ''opts out'' from continuing to trade through that FCM merely because the customer elected to ''opt out.'' Additionally, Vanguard requested that customers have immediate access to the reports indicating that FCMs have failed to comply with various mandates including compliance with § 1.25 margin investment limits; and that customers have access on a twice monthly basis to reports on an FCM's actual investment of customer assets to determine whether such investments are concentrated in more or less liquid assets as allowed under § 1.25.[746] Although the Commission understands the concern of the public regarding the safety and investment of customer funds, because an ''opt out'' provision was not proposed by the Commission, and would in any case not be effective due to pro-rata distribution in an FCM bankruptcy, this alternative is not adopted in this final rulemaking.

Section 1.26 Deposit of Instruments Purchased with Customer Funds

Regulation 1.26 requires an FCM or DCO that invests futures customer funds in instruments described in § 1.25 to obtain a written acknowledgment from any depository holding such instruments. The FCM or DCO must use the Template Letters in the appendices to § 1.20, in accordance with the requirements established in § 1.20. The specifics of those requirements, as well as the costs and benefits of them, are detailed in the discussion of costs and benefits for § 1.20. If, however, an FCM or DCO invests funds with a money market mutual fund (MMMF), the FCM or DCO must use the Template Letters in the appendices of § 1.26 rather than the acknowledgment letters in the appendices of § 1.20.[747] The content of the Template Letters in the appendices to § 1.26 is identical to those in the appendices to § 1.20 except that they include three additional provisions related specifically to funds held by the MMMF or its custodian. Specifically, the Template Letters set out the requirements established in § 1.25(c) that: (1) the value of the fund must be computed and made available to the FCM or DCO by 9:00 a.m. on the following business day; (2) the fund must be legally obligated to redeem shares and make payments to its customers (*i.e.,* the FCM or DCO) by the following business day; and (3) the MMMF does not have any agreements in place that would prevent the FCM or DCO from pledging or transferring fund shares.

Benefits

The benefits are largely the same as for the Template Letters required under § 1.20, described above in the cost-and-benefit section related to § 1.20. However, there are benefits to requiring FCMs and DCOs to obtain a different Template Letter from MMMFs with respect to customer funds invested in MMMFs. Specifically, MMMFs or their custodians (as applicable) are required to acknowledge their additional obligations under § 1.25(c).

Costs

The costs are largely the same as for the Template Letters required under § 1.20. The general concerns raised by commenters regarding the costs arising from the Template Letters as well as the Commission's responses are detailed in the discussion of costs for § 1.20.

Section 1.29 Gains and Losses Resulting From Investment of Customer Funds

Regulation 1.29 provides that an FCM or DCO may keep as its own any interest or other gain resulting from the investment of customer funds in financial instruments permitted under § 1.25; however, the FCM or DCO must manage the permitted investments consistent with the objectives of preserving principal and maintaining liquidity. The Commission's amendment also explicitly provides that although an FCM or DCO is not required to pass the earnings on the investment of customer funds back to its futures customers, the FCM or DCO is solely responsible for any losses that result from its investment of customer funds.

[743] Schippers Comment Letter (Dec. 10, 2013), Randy Fritsche Comment Letter (Feb. 14, 2013), NPPC Comment Letter at 2 (Feb. 14, 2013), Strelitz/California Metal X Comment Letter (Jan. 15, 2013), Premier Metal Services Comment Letter at 4 (Jan. 3, 2013), ISRI Comment Letter at 5–7 (Dec. 4, 2012), AIM Comment Letter at 4 (Jan. 24, 2013), Kripke Enterprises Comment Letter (Dec. 12, 2012), Manitoba Comment Letter (Dec. 13, 2012), Solomon Metals Corp. Comment Letter (Jan. 15, 2013), Michael Krall Comment Letter (Dec. 17, 2012), David Kennedy Comment Letter (Dec. 17, 2012), Robert Smith Comment Letter (Dec. 17, 2012), Michael Carmichael Comment Letter (Dec. 17, 2012), Andrew Jackson Comment Letter (Dec. 17, 2012), Donald Blais Comment Letter (Dec. 17, 2012), Suzanne Slade Comment Letter (Dec. 17, 2012), Patricia Horter Comment Letter (Dec. 17, 2012), JoDan Traders Comment Letter (Dec. 17, 2012), Jeff Schlink Comment Letter (Dec. 18, 2012), Sam Jelovich Comment Letter (Dec. 18, 2012), Matthew Bauman Comment Letter (Dec. 20, 2012), Mark Phillips Comment Letter (Dec. 22, 2012), Deborah Stone Comment Letter (Dec. 24, 2013), Po Huang Comment Letter (Dec. 24, 2012), Aarynn Krall Comment Letter (Jan. 8, 2013), Vael Asset Management Comment Letter (Jan. 10, 2013), Kos Capital Comment Letter (Jan. 11, 2013), James Lowe Comment Letter (Jan. 13, 2013), Tracy Burns Comment Letter (Jan. 14, 2013), Treasure Island Coins Comment Letter (Jan. 14, 2013), and Clare Colreavy Comment Letter (Jan. 9, 2013).

[744] NPPC Comment Letter at 2 (Feb. 14, 2013), Premier Metal Services Comment Letter at 4 (Jan. 3, 2013), ISRI Comment Letter at 5–7 (Dec. 4, 2012), AIM Comment Letter at 4 (Jan. 24, 2013), Kripke Enterprises Comment Letter (Dec. 12, 2012), Manitoba Comment Letter (Dec. 13, 2012), Solomon Metals Corp. Comment Letter (Jan. 15, 2013), Michael Krall Comment Letter (Dec. 17, 2012), David Kennedy Comment Letter (Dec. 17, 2012), Robert Smith Comment Letter (Dec. 17, 2012), Michael Carmichael Comment Letter (Dec. 17, 2012), Andrew Jackson Comment Letter (Dec. 17, 2012), Donald Blais Comment Letter (Dec. 17, 2012), Suzanne Slade Comment Letter (Dec. 17, 2012), Patricia Horter Comment Letter (Dec. 17, 2012), JoDan Traders Comment Letter (Dec. 17, 2012), Jeff Schlink Comment Letter (Dec. 18, 2012), Sam Jelovich Comment Letter (Dec. 18, 2012), Matthew Bauman Comment Letter (Dec. 20, 2012), Mark Phillips Comment Letter (Dec. 22, 2012), Deborah Stone Comment Letter (Dec. 24, 2013), Po Huang Comment Letter (Dec. 24, 2012), Aarynn Krall Comment Letter (Jan. 8, 2013), Vael Asset Management Comment (Jan. 10, 2013), Kos Capital Comment (Jan. 11, 2013), James Lowe Comment Letter (Jan. 13, 2013), Tracy Burns Comment Letter (Jan. 14, 2013), Treasure Island Coins Comment Letter (Jan. 14, 2013), and Clare Colreavy Comment Letter (Jan. 9, 2013).

[745] NPPC Comment Letter at 2 (Feb. 14, 2013); Premier Metal Services Comment Letter at 4 (Jan. 3, 2013); ISRI Comment Letter at 6 (Dec. 4, 2012); AIM Comment Letter at 6 (Jan. 24, 2013); Kripke Enterprises Comment Letter (Dec. 10, 2012); Manitoba Comment Letter (Dec. 13, 2012); and Solomon Metals Corp. Comment Letter (Jan, 15, 2013).

[746] Vanguard Comment Letter at 4–6 (Feb. 22, 2013).

[747] Further, per § 1.25(c)(3), the FCM or DCO shall obtain the § 1.26 Template Letter from ''an entity that has substantial control over the [MMMF] shares purchased with customer funds and has the knowledge and authority to facilitate redemption and payment or transfer of the customer funds. Such entity may include the [MMMF] sponsor or depository acting as custodian for [MMMF] shares.''

Costs and Benefits

In the NPRM, the Commission discussed how the amendment clarifies that the allocation of losses on the investment of customer funds by an FCM or DCO to its customers would result in the use of customer funds in a manner that is not consistent with section 4d(a)(2) and § 1.20, as customer funds can only be used for the benefit of futures customers and limits withdrawals from futures customer accounts, other than for the purpose of engaging in trading, to certain commissions, brokerage, interest, taxes, storage or other fees or charges lawfully accruing in connection with futures trading. This change was supported by FIA, which stated its belief that the FCM's or DCO's responsibility for losses in § 1.25 investments ''is clear and is implicit in the Act and the Commission's rules.'' [748] The Commission believes that market participants already recognize this responsibility and obligation and direct the investment of customer funds accordingly. Therefore, the Commission does not believe that the amendment to § 1.29(b) will create any additional costs; however, the marketplace will benefit in that the amendment provides clarity as to the FCM's or DCO's sole responsibility for any losses resulting from the investment of customer funds in the financial instruments listed under § 1.25. FIA filed a comment supporting the proposed amendments to § 1.29.[749] No other comments were received. The Commission has adopted the amendments to § 1.29 as proposed.

Section 1.30 Loans by Futures Commission Merchants; Treatment of Proceeds

The Commission adopted amendments to § 1.30 to clarify that, while an FCM may provide secured loans to a customer with adequate collateral, it may not make loans to a customer on an unsecured basis or use a customer's futures or options positions as security for a loan from the FCM to that customer.

Costs and Benefits

The amendments prohibiting FCMs from providing unsecured loans to customers and from using a customer's positions to secure loans made to such customers reduce counterparty risk borne by the FCM. The former prohibition prevents the FCM from accumulating exposures to customers that have not margined their positions, while the latter prevents the additional exposure that otherwise would result from using the same collateral to secure two different risks (*i.e.,* the risks associated with the open positions and the risks associated with the secured loan). Additionally, to the extent that the amendments would force certain customers to obtain loans from another lender, it diversifies the counterparty risk across multiple entities. The amendments also are comparable to rules of the CME for its member firms.

The Commission did not quantitatively estimate the potential increase to customers' operational costs due to the inability of customers who need or desire to use borrowed funds to meet initial and maintenance margin requirements to obtain loans necessary to fund their futures or options positions from a third party lender. The Commission requested, but did not receive, comments regarding the prevalence of FCMs' extension of loans to customers and the potential costs customers might bear if it were necessary to obtain loans from third parties rather than from the FCMs with whom their segregated customer accounts are held. Neither were any comments received generally suggesting a qualitative burden in complying with the amendments.

Section 1.32 Reporting of Segregated Account Computation and Details Regarding the Holding of Customer Funds

The adopted amendments to § 1.32 allow an FCM that is not a dual registrant to follow the same procedures as dual registrants (FCM/BDs) when assessing a haircut to securities purchased with customer funds if the FCM determines that those securities have minimal credit risk. This is the same change as adopted in § 1.17, except that in § 1.17 the amendment is with respect to the haircut for securities purchased by an FCM with its own capital, whereas this amendment applies to the haircut ascribed to the collateral value of securities deposited by customers for the purpose of securing customer net debits. The cost benefit considerations are the same as those analyzed with the corresponding amendment to § 1.17.

In addition, the adopted amendments (1) require FCMs to submit their daily Segregation Schedules, Secured Amount Schedules, and Cleared Swaps Segregation Schedules to the Commission and their DSROs electronically by noon the following business day; (2) require that twice per month, each FCM submits a detailed list of all the depositories and custodians where customers' segregated funds are held, including the amount of customer funds held by each entity and a break-down of the different categories of § 1.25 investments held by each entity, further identifying if any of the depositories are affiliated with the FCM; and (3) require that the detailed list of depositories be submitted to the Commission electronically by 11:59 p.m. the following business day and that both segregation and secured amount statements and the detailed listing of depositories be retained by the FCM in accordance with § 1.31.

Costs and Benefits

Requiring FCMs to submit their daily segregation and secured amount calculations to the Commission and DSROs will enable the Commission and DSROs to better protect customer funds by more closely monitoring for any discrepancies between the assets in segregated accounts reported by the FCM and their depositories as reported to the DSRO and available to the Commission through an aggregator of depository balances. The ability of the Commission and DSRO to check for discrepancies more regularly, without notice, is likely to provide an additional deterrent to fraud. Moreover, it will enable both the Commission and DSROs to monitor for any trends that would indicate that operational or financial problems are developing at the FCM, which would give the Commission an opportunity to enhance its supervision and to intervene, if necessary, to protect customer segregated funds. In addition, the amendments are consistent with the rules of SROs that currently require each FCM to submit daily segregation and secured amount calculations to the SROs.

The detailed list of depositories will provide additional information to the Commission and DSROs beyond what is required under §§ 1.20, 1.26, and 30.7. First, the detailed list of depositories will provide additional account detail including the types of securities and investments that constitute each account's assets, rather than just the total value. Second, the reports will account for any pending transactions that would not necessarily be apparent from the daily balances submitted to an aggregator by the depositories. Third, FCMs will, in these reports, provide to the Commission and DSROs a reconciled balance, which will not be included with balances provided to the aggregator by depositories. Last, the FCM will be required to specifically

[748] FIA, ''Initial Recommendations for Customer Funds Protection'' available at *http://www.futuresindustry.org/downloads/Initial_Recommendations_for_Customer_Funds_Protection.pdf.*

[749] FIA Comment Letter at 30–31 (Feb. 15, 2013).

identify any depositories that are affiliated with the FCM. Each of these additional forms of information would enable the Commission and DSROs to provide better oversight and create additional accountability for the FCM, enhancing the protection of market participants.

FCMs are already calculating segregated funds information daily and reporting the results to NFA via WinJammer by noon the following day. Similarly, the detailed list of depositories that would be required to be submitted twice per month is already required by NFA to be produced and submitted to NFA via WinJammer.[750] Requiring FCMs to submit these reports to the Commission via the same platform is not expected to create any additional costs.

FIA commented in support of the amendments to § 1.32 and asked for clarification that on a daily basis, a single U.S. dollar equivalent, as opposed to multiple currency by currency schedules, is what is required to be filed.[751] Jefferies commented that the amendments to § 1.32 will not achieve the benefit of transparency to customers because of the way cash and investments are presented separately from balances at other FCMs and DCOs.[752] However, this comment appears related to the requirements of disclosure to customers of NFA's publicly available information, not the requirements of § 1.32, which require similar information to be reported to the Commission and DSROs. The Commission believes the detailed information required, along with all the additional disclosures being provided to customers in the amendments to all rules contained herein, do provide sufficient transparency for customers to be able to assess the risks of depositing funds with FCMs. The specific detailed amounts of cash and securities held in segregation must be provided, by individual depository, including DCOs, under the amendment to § 1.32. The Commission does not believe that customers will misinterpret the liquidity of cash held at DCOs as opposed to other types of depositories, and that therefore the requirements do not provide the transparency intended, although the Commission understands that Jefferies is concerned with the appearance of percentage calculations that are provided publicly on NFA's portal. The Commission notes, however, that the amendments to § 1.32 do not require reporting of any percentage calculations. There were no comments received regarding the Commission's analysis that, due to the existing NFA requirements, the Commission's amendments to § 1.32 were not expected to result in incremental costs for FCMs.

With respect to the adopted changes to allow FCMs to utilize lower haircuts applicable to the market value of customer securities, if such securities are determined to have minimal credit risk, in determining the allowance provided for securing net deficits of customers, the CFA specifically objected to the ability of FCMs to obtain the benefit of lower haircuts by utilizing the process of establishing credit risk proposed in the amendment to the SEC's rule 15c3–1.[753] However, the Commission has determined that the ability of FCMs to utilize haircuts lower than the standard deduction of 15% otherwise applicable under SEC rule 15c3–1 should be equally available to FCMs along with jointly registered BD/FCMs under the Commission's adopted amendment to the net capital rule at § 1.17, to promote equity and fairness of competition between FCMs and joint BD/FCMs and to maintain uniformity with the capital rule of the SEC for the treatment of securities as much as practicable. The Commission believes, despite the CFA's comments indicating the haircut could be manipulated, that the collateral value haircut for the same security for the purpose of securing net deficits should also be determined by reference to the net capital haircut for the same security, and notes both have always been determined by the SEC's net capital haircuts for securities. The Commission believes the benefits of continuing to have such uniformity are substantial. The alternative, which necessarily would be applying a very substantial standard haircut to a debt security with minimal credit risk collateralizing a short term obligation, would be overly harsh and not accurately reflect the market risk to such collateral for the stated purpose of valuing the extent to which the customer debit is adequately secured. The Commission further notes that the SEC's rule, which is the basis for these amendments at §§ 1.17, 1.32 and 30.7, and the formulation adopted in these amendments, still provides a standard, although lesser percentage, haircut, not a model-based haircut, and also provides for an audit trail of the BD/FCM's determinations supporting the determination of minimal credit risk, which should prevent the ability of FCMs to manipulate the haircut, as suggested by CFA.

Section 1.52 Self-regulatory Organization Adoption and Surveillance of Minimum Financial Requirements

The amendments to 1.52 revise the supervisory program that SROs are required to create and adopt. In addition, for SROs that choose to delegate the function to examine FCMs that are members of two or more SROs to a DSRO, the amended rules require a plan that establishes a Joint Audit Committee which, in turn, must propose, approve, and oversee the implementation of a Joint Audit Program. The amended rules specify a number of additional requirements for the SRO supervisory program as well as for the Joint Audit Program.

Costs and Benefits

The amendments adopted to § 1.52 provide significant additional protection to market participants and customer of FCMs by helping to ensure that SRO examinations of member FCMs are thorough, effective and risk-based, and include evaluation and testing of internal controls as well as meeting, as applicable, other objective criteria from related professional audit standards. Specifically, an SRO's audit program must be risk-based (*e.g.,* the scope and focus of such examinations would be determined by the risk profile that the SRO develops for each FCM) and address ''all areas of risk to which FCM can reasonably be foreseen to be subject,'' and that the examination itself includes both controls testing as well as substantive testing. Requiring regulatory examinations by SROs to include testing and review of internal controls will help ensure that each FCM is not only compliant with capital and segregation requirements at the time of the examination, but that they continue to operate in such a manner without undetected internal controls inadequacies that could jeopardize the FCM and its customers.

By requiring that the supervisory program for an SRO to adhere to professional standards for auditing as applicable, the Commission is provided with additional assurance as to standards for aspects of an examination such as the adequacy of the evaluation of evidence obtained supporting examination conclusions; the training and proficiency of the examinations staff; due professional care in the performance of the work; consideration of fraud, audit risk and materiality in conducting an audit; planning and supervision; understanding the entity and its environment and assessing the

[750] *See* Segregated Investment Detail Report at *http://www.nfa.futures.org/NFA-compliance/NFA-futures-commission-merchants/fcm-reporting.pdf.*

[751] FIA Comment Letter at 30–31 (Feb. 15, 2013).

[752] *See* Jefferies Comment Letter at 3 (Feb. 15, 2013).

[753] *See* CFA Comment Letter at 7 (Feb. 13, 2013).

risk of material misstatement; communication with those charged with governance of the examined entity; and communicating internal control matters identified in an examination. These benefits are obtained by requiring SRO supervisory programs to include consideration of specific issues and be carried out in compliance with professional standards as may be applicable to non-financial audits. The Commission believes more rigorous requirements and the application of professional standards in carrying out such requirements will add additional protection to an FCM's counterparties and customers.

The Commission also proposed to require SROs and as applicable the JAC, to obtain an evaluation of the SRO's or JAC's supervisory program at least once every two years from an examinations expert, defined as a nationally recognized accounting and auditing firm with substantial expertise in audits of FCMs, risk assessment and internal control reviews, and that is an accounting and auditing firm that is acceptable to the Commission (as delegated to the Director of the Division of Swap Dealer and Intermediary Oversight). The benefits of such evaluation by examinations experts were expected to be that the Commission would ensure that the supervisory program and SRO audits continue to build on best practices, which further promotes thorough and effective audits of FCMs. The Commission quantitatively estimated costs for making incremental changes to the requirements of the supervisory program for each SRO and members of the JAC in the NPRM. The Commission did not quantitatively estimate the ongoing costs of obtaining an evaluation by an examinations expert or requiring examinations to comply with professional standards, although the Commission did consider that requiring such an evaluation and requiring compliance with such standards and coverage of additional risks would add costs to examinations by SROs and members of the JAC.

The Commission received many comment letters regarding the changes proposed to § 1.52. Several of the commenters objected to the requirements for having a review of the examination program by an examinations expert.[754] Specifically, PWC raised concern with the ability of nationally recognized accounting and auditing firms to be able to issue any type of assurance without a reporting framework.[755] NFA, MGEX, and CME all commented that costs would be prohibitive and that benefits would be reduced because such an evaluation would be duplicative to the functions of the Commission in review of the Joint Audit Program. NFA commented that it attempted to obtain cost estimates from a few nationally recognized firms but that such firms represented that they were unable to provide cost information without a better understanding of the type of review the Commission was proposing.[756] CME commented that the quantitative estimates of the Commission for revising the program were grossly underestimated.[757] CME analogized that requiring adherence to professional standards would result in examination requirements similar to the average man hours applicable to private and public company audits, which were represented at 1,951 and 17,457 respectively.[758] CME represented that the costs of compliance with professional standards and expanding the program were prohibitively expensive and requested that only applicable provisions should be carried into JAC protocols.[759] CME commented that any benefit from obtaining an evaluation from an examinations expert could be obtained at a much reduced cost by including representatives from such nationally recognized firms in the JAC meetings and in the current process to develop JAC protocols, without obtaining a formal assessment, which such firms would more likely to be willing to do.[760] CME further posited that if such alternative was not adopted, the timeframe should be lengthened from two to three and a half years.[761] MGEX further commented that if such report were to be required, highly qualified regional firms should be considered as well as nationally recognized firms, as more competition would likely result in more manageable costs.[762]

In consideration of the concerns of commenters, the Commission has adopted revised amendments to the examinations expert requirement to § 1.52, which extend the time between evaluations required to three years, and clarify that the standard for such evaluation should be that of a consulting services report. The Commission also has considered the comments of CME and others with respect to the costs and inapplicability of many aspects of the PCAOB auditing standards to regulatory examination and has adopted, in the revised amendments to the professional standards requirements, that only such standards as would be analogous to non-financial statement audits would be applicable.

The JAC also filed an additional comment letter positing that the requirements of proposed § 1.52, requiring review of risk management, would be duplicative to risk reviews required to be performed by DCOs.[763] Although the Commission agrees there may be overlapping responsibilities between oversight performed by DCOs and SROs which could result in duplicated costs, the primary focus of DCO requirements are the protection of the DCO, not the protection of customers and market participants. The Commission notes that the same duplication could exist if an FCM were examined by each SRO of which it was a member. The Commission already permits the Joint Audit Committee, the Joint Audit Plan and the DSRO structure for the purpose of mitigating duplicative examination work and costs. As stated in the preamble, a DSRO may be able to fulfill parts of its examination program by incorporating aspects of risk reviews and work already performed by a DCO, but the DSRO would be responsible for ensuring any such work was adequately and specifically incorporated into the DSRO program, and oriented to ensuring the protection of customers and risks to the FCM.

Additionally, the Commission notes it was not feasible to quantify any costs associated with utilizing an examinations expert. This is largely because several nationally recognized accounting firms expressed their reluctance to provide such information.[764] Such a response is not surprising given the fact that reviewing a DSRO's examination program is likely a unique and limited engagement for any firm, which would require fully understanding the scope and requirements of the review. Yet, the Commission notes there are several capable firms which would meet the definition of ''examinations expert'' and could perform the type of review required by the regulation. Thus, the costs for performing such a service will likely be competitive.

[754] CME, JAC, MGEX, NFA and PWC all commented objecting to or raising concern with this aspect of the amendment to § 1.52.

[755] *See* PWC letter at 3 (Jan. 15, 2013).

[756] *See* NFA Comment Letter at 5 (Feb. 15, 2013).

[757] CME Comment Letter at 11 (Feb. 15, 2013).

[758] *Id.*

[759] *Id.*

[760] *Id.*

[761] *See* CME Comment Letter at 12–13 (Feb. 15, 2013).

[762] *See* MGEX letter at 4 (Feb. 18, 2013).

[763] *See* JAC Comment Letter at 3–4 (July 25, 2013).

[764] *See* NFA Comment Letter at 5, n.2 (Feb. 15, 2013).

Section 1.55 Public Disclosures by Futures Commission Merchants

Amended § 1.55 significantly revises the disclosures that FCMs are required to provide to prospective customers and the public, detailed in § 1.55(b). The new required provisions include a statement that: (1) Customer funds are not protected by insurance in the event of the bankruptcy or insolvency of the FCM, or if customer funds are misappropriated; (2) customer funds are not protected by SIPC, even if the FCM is a BD registered with the SEC; (3) customer funds are not insured by a DCO in the event of the bankruptcy or insolvency of the FCM holding the customer funds; (4) each customer's funds are not held in an individual segregated account by an FCM, but rather are commingled in one or more accounts; (5) FCMs may invest funds deposited by customers in investments listed in § 1.25; and (6) funds deposited by customers may be deposited with affiliated entities of the FCM, including affiliated banks and brokers. The required additional disclosures must be provided as an addition to the generic risk disclosure statement if used by an FCM as permitted under Appendix A to § 1.55.

In addition, the amendments at § 1.55(i), (j) and (k) require each FCM to provide a Firm Specific Disclosure Document that would address firm specific information regarding its business, operations, risk profile, and affiliates that would be material to a customer's decision to entrust funds to and do business with the FCM.

The Firm Specific Disclosure Document is required to be made available electronically, which may be a link to the FCM's Web site, but must be provided in paper form upon request, and would provide material information about: (1) General firm contact information; (2) the names, business contacts, and backgrounds for the FCM's senior management and members of the FCM's board of directors; (3) a discussion of the significant types of business activities and product lines that the FCM engages in and the approximate percentage of the FCM's assets and capital devoted to each line of business; (4) the FCM's business on behalf of its customers, including types of accounts, markets traded, international businesses, and clearinghouses and carrying brokers used, and the FCM's policies and procedures concerning the choice of bank depositories, custodians, and other counterparties; (5) a discussion of the material risks of entrusting funds to the FCM and an explanation of how such risks may be material to its customers [765]; (6) the name and Web site address of the FCM's DSRO and the location of annual audited financial statements; (7) a discussion of any material administrative, civil, criminal, or enforcement actions pending or any enforcement actions taken in the last three years; (8) a basic overview of customer fund segregation, FCM collateral management and investments, and of FCMs and joint FCM/BDs; (9) information regarding how customers may file complaints about the FCM with the Commission or appropriate DSRO; (10) certain financial data from the most recent month-end when the disclosure document is prepared; and (11) a summary of the FCMs' current risk practices, controls and procedures. FCMs are required to update the Firm Specific Disclosure Document as and when necessary to make the information accurate and complete, but at least annually.

The newly adopted § 1.55(l) also requires FCMs to adopt policies and procedures reasonably designed to ensure that advertising and solicitation activities of such FCMs and any introducing brokers associated with the FCMs are not misleading in connection with their decision to entrust funds and do business with such FCMs.

FCMs are further required by § 1.55(o) to disclose on their Web sites their daily Segregation Schedule, daily Secured Amount Schedule, and daily Cleared Swaps Segregation Schedule. Each FCM must maintain 12 months of such schedules on its Web site. Each FCM must disclose on its Web site summary schedules of its adjusted net capital, net capital, and excess net capital for the 12 most recent month-end dates, as well as the Statement of Financial Condition, Segregation Schedule, Secured Amount Schedule, Cleared Swaps Segregation Schedule, and all footnotes related to the above statements and schedules from its most current year-end annual report that is certified by an independent public accountant.

Costs and Benefits

Current regulations require FCMs to provide a risk disclosure to potential customers before accepting customer funds, which existing risk disclosure statement primarily provides a customer with disclosure of the market risks of engaging in futures trading. The revised disclosure requirements of § 1.55 provide customers with additional information regarding certain non-firm-specific risks that have been relevant in recent FCM bankruptcies and that could be relevant in the event of future FCM bankruptcies or insolvencies.

The Firm Specific Disclosure Document required by this amendments address firm-specific risk, which will give potential customers additional information that they may use when conducting due diligence and selecting an FCM. By requiring that the disclosure address several specific topics, the public comparability of information on such topics will be available, to potential customers conducting due diligence on potential FCMs. The non-firm specific additional disclosures will provide a significant benefit to the protection of market participants as many customers in the aftermath of recent FCM bankruptcies revealed fundamental misconceptions about the protection of their funds. Specifically, certain customers did not fully understand how FCMs held customer funds or the protections extended to such funds. Consequently, certain customers did not make informed choices to help themselves or to provide market discipline to their FCMs.

In the NPRM, the Commission described how each additional specific risk disclosure was expected to benefit the protection of market participants by providing more transparency and equal access to information among all customers and the public, enhancing customer's ability to make comparisons in choosing the FCMs with which they do business. The specific benefits of each disclosure required by the amendments were described in the NPRM, but the essential benefits derived from each additional required disclosure, and the aggregate of all the additional disclosures, are that they will result in more educated consumers of FCM services, and that such consumers will, through the greater transparency resulting from the additional disclosures, be better able to enforce market discipline on aspects of FCM business that are directly relevant to the risks customers accept in dealing with and depositing funds with FCMs.

The Commission quantitatively estimated expected costs of providing the additional general and firm specific disclosures in the NPRM and did not receive any comments about its specific estimates. However, the Commission

[765] The material risks addressed must include, without limitation, "the nature of investments made by the futures commission merchant (including credit quality, weighted average maturity, and weighted average coupon); the futures commission merchant's creditworthiness, leverage, capital, liquidity, principal liabilities, balance sheet leverage and other lines of business; risks to the futures commission merchant created by its affiliates and their activities, including investment of customer funds in an affiliated entity; and any significant liabilities, contingent or otherwise, and material commitments."

did receive many comments that supported the amendments to § 1.55 reiterating the benefits perceived from transparency resulting from the additional disclosures as are described at section II.P. and noting that these amendments were particularly cost effective at providing such benefits. FHLB stated ''[p]erhaps the most compelling argument for additional public disclosure of certain information addressed in the Proposed Customer Protection Rules is that the benefits should far exceed the additional cost associated with mandating such public disclosures.'' [766] ACLI and the Commercial Energy Working Group both stated ''the Proposed Customer Protection Rules represent a very cost-effective approach/means to making FCMs more accountable to their customers by providing current information that will enable customers to conduct appropriate due diligence regarding prospective FCMs and to actively monitor the financial condition and regulatory compliance of the FCMs to which they have entrusted funds.'' [767]

FIA specifically commented with respect to the disclosures required under § 1.55(k) that FCMs that are part of public companies, or dually registered BDs, or are part of a bank holding company, already have disclosure requirements and that the Commission should confirm that such an FCM may comply with this rule by making the annual reports and amendments thereto available on its Web site, in order to avoid duplicative or conflicting disclosure requirements.[768] FIA further commented that the level of detail required of privately owned FCM's disclosure should be consistent with that provided in the annual reports of publicly-traded companies.[769] Newedge commented that all FCMs should be required to disclose similar information in a standard format, and the proposal of FIA to satisfy disclosure requirements by linking to the annual report of a public company places firms without annual report preparation requirements at a competitive disadvantage and discriminates against smaller to mid-size FCMs.[770]

In the preamble discussion at section II.P., the Commission clarified both that disclosures could be satisfied by linking to appropriate existing relevant disclosures that were already required for the same matters, but that the disclosures required by the amendments are specific to the FCM and cannot be satisfied with more general disclosure at a holding company level. The Commission believes this clarification addresses the duplication concern raised by commenters.

Several commenters posited concerns regarding the benefit of various aspects of the mandated disclosures. The comments addressed the disclosures of leverage, the targeted residual interest, customer write-offs, and that such disclosures could in certain circumstances be potentially misleading to customers.[771] With respect to these comments the Commission notes that with all aspects of the mandated additional disclosures, appropriate explanations and additional information to ensure sufficient context should be provided if necessary to clarify anything that an FCM may regard as otherwise being misleading. Concerns raised by commenters that customers may inadequately assess risks particular to their FCM by inappropriately focusing on only one aspect of disclosure, such as leverage, or targeted residual interest, cannot be mitigated by declining wholesale to make relevant information publicly available. Furthermore, FCMs are free to supply additional context and information when they believe that any Firm Specific Disclosure is misleading.

Certain commenters have requested that the Commission consider the alternative to further require all § 1.12 notices to be made publicly available, which the Commission has declined to do as is discussed in the costs and benefits discussion of § 1.12. By requiring FCMs to update the disclosures annually, as well as any time there is a ''material change to its business operation, financial condition and other factors material to the customer's decision to entrust the customer's funds and otherwise do business with the futures commission merchant,'' and requiring the FCM to provide each updated disclosure to its customers, § 1.55(i) makes FCMs responsible to communicate with customers whenever such events occur. The Commission notes that there may be overlap in circumstances which give rise to notice obligations under § 1.12 and which require updated public disclosure, although the two are distinct and separate requirements. This requirement helps to ensure that the FCM's financial condition, business operations, or other important factors do not change in material ways without customers being able to ascertain such changes, and would likely prompt some customers to conduct additional due diligence in such situations in order to determine whether their funds are at risk, which would provide additional accountability for FCMs.

By requiring each FCM to adopt policies and procedures reasonably designed to ensure that its advertising and solicitation activities are not misleading to its FCM customers under § 1.55(l), the Commission is strengthening accountability for communication related to an FCM's sales and solicitation activities which helps to ensure the purposes of the other requirements for disclosure are not frustrated.

By requiring FCMs to provide their daily Segregation Schedules, daily Secured Amount Schedules, and daily Cleared Swaps Segregation Schedules, as well as the same schedules from the most recent certified annual report, the requirements under § 1.55(o) facilitate transparency. Requiring each FCM to post the above schedules and data on its Web site will help to ensure that market participants are aware that it is available, and will improve the speed and efficiency of obtaining it. Similarly, by requiring FCMs to provide a link to the Web site of the NFA's Basic System facilitate transparency by promoting awareness of the additional information that is public regarding each FCM's investment of customer funds and by reducing the search costs for obtaining that information.

Section 22.2 Futures Commission Merchants: Treatment of Cleared Swaps and Associated Cleared Swap Customer Collateral

The adopted amendments to § 22.2 incorporate changes with respect to protection of funds for customers trading cleared swaps that are identical to the changes proposed for protection of futures customer funds.[772] Those changes include: (1) Incorporating the same change to haircutting procedures as adopted in § 1.17 and § 1.32 but for Cleared Swaps; (2) requiring the FCM to

[766] *See* FHLB Comment Letter at 3 (Feb. 15, 2013).

[767] *See* ACLI Comment Letter at 2 (Feb. 15, 2013); Commercial Energy Working Group Comment Letter at 2 (Feb. 13, 2013).

[768] *See* FIA Comment Letter at 43 (Feb. 15, 2013).

[769] *Id.* at 44.

[770] Newedge Comment Letter at 4 (Feb. 15, 2013).

[771] *See* FCStone Comment Letter at 4 (Feb. 15, 2013); Phillip Futures Inc. Comment Letter at 2 (Feb. 14, 2013); CHS Hedging Comment Letter at 2 (Feb. 15, 2013); RJ O'Brien Comment Letter at 6–9 (Feb. 15, 2013); TD Ameritrade Comment Letter at 4 (Feb. 15, 2013); Advantage Comment Letter at 4 (Feb. 15, 2013); RCG Comment Letter at 5–6 (Feb. 12, 2013).

[772] As noted in section II.Q. above, the revisions to §§ 22.2(a) and (f) merely clarify that the calculation set forth therein is the Net Liquidating Equity Method and thus, the revision is not intended to, and should not be read to, change current practice with respect to an FCM's residual interest requirements for Cleared Swaps as set forth in Commission regulations and JAC Update 12–03, and consistent with Staff Interpretation 12–31.

send daily Segregation Calculations for Cleared Swaps to the Commission and DSROs; and (3) requiring that segregated investment detail reports be produced twice per month, listing assets on deposit at each depository, and sent to Commission and DSROs electronically by 11:59 p.m. the following business day. Records of both reports are required to be maintained in accordance with § 1.31.

Costs and Benefits

As discussed above, amendments to § 22.2(a) and (f) are not intended to change existing practice and thus do not introduce new costs. The other amendments to § 22.2 noted above are substantively similar to amendments to corresponding part 1 regulations and the relevant costs and benefits are similar to the costs and benefits discussed in those sections.

The amendments to § 22.2 have the benefits of harmonizing the protection of customer funds between Cleared Swaps and futures and clarifying further the regulatory requirements for Cleared Swaps.

Section 22.17 Policies and Procedures Governing Disbursements of Cleared Swaps Customer Collateral From Cleared Swap Customer Accounts

The newly adopted § 22.17 imposes restrictions on an FCM's withdrawal of its residual interest, and requires that if a withdrawal of residual interest not for the benefit of customers causes the FCM to fall below its targeted residual interest, that the funds be replenished the following business day or the residual interest target be lowered in accordance with its policies and procedures established under § 1.11.

Costs and Benefits

The costs and benefits are similar to those created by §§ 1.23 and 1.11 but apply to customer funds in Cleared Swaps Customer Accounts rather than customer segregated accounts, and therefore are as described in §§ 1.23 and 1.11, but incremental thereto with respect to Cleared Swaps Customer Accounts.

Section 30.1 Definitions

Amendments adopted to § 30.1 establishes new definitions for ''30.7 customer,'' ''30.7 account,'' and ''30.7 customer funds.'' The first is defined as any foreign futures or foreign option customer, together with any foreign-domiciled person who trades in foreign futures or foreign options trough an FCM. ''30.7 account'' and ''30.7 customer funds'' are then defined accordingly. These definitions relate to the existing terms ''foreign futures or foreign options customer,'' ''foreign futures or foreign options customer account,'' and ''foreign futures or foreign options customer funds,'' respectively. The term ''foreign futures or foreign options customer'' only includes U.S.-domiciled customers that deposit funds with an FCM for use in trading foreign futures or foreign options. The new definitions, on the other hand, include both U.S. and foreign-domiciled customers that deposit funds with an FCM for use in trading foreign futures or foreign options.

Costs and Benefits

These definitions play a 'gatekeeping' function with respect to other rules by determining what customers are included as ''30.7 customers.'' However, the costs and benefits of these changes are attributable to the substantive requirements related to the definitions, and therefore are discussed in the cost benefit considerations related to § 30.7.

Section 30.7 Treatment of Foreign Futures or Foreign Options Secured Amount

The adopted amendments to § 30.7 (1) Incorporate the funds of foreign-domiciled investors deposited with an FCM for investment in foreign futures and foreign options within the protections provided in § 30.7; (2) eliminate the Alternative Method and require the Net Equity Liquidation Method for calculating 30.7 customer segregation requirements; (3) add specificity to the written acknowledgments that FCMs and DCOs must obtain from their depositories by providing required templates;[773] (4) add restrictions on withdrawing from residual interest not for the benefit of customers;[774] (5) require that 30.7 customer funds deposited in a bank must be available for immediate withdrawal at the request of the FCM; (6) clarify that the FCM is responsible for any losses related to investing 30.7 customer funds in investments that comply with § 1.25; (7) add a prohibition against making unsecured loans to customers or using the funds in the customer's trading account as security for a loan; (8) require daily segregation reports and a detailed list of depositories to be submitted to the Commission and DSRO, and that targeted residual interest be included in both of those reports; (9) allow FCMs that are not dual registrants to use the BD procedure for assigning a smaller net capital haircut to investments of 30.7 customer funds in certain types of instruments with low default risk; (10) establish a limit on the amount of funds in a 30.7 account that can be held outside the U.S.; and (11) require FCMs to, at a specified point in time, maintain residual interest in 30.7 accounts that is at least equal to the sum of all undermargined amounts for 30.7 customers. With the exception of the requirements with respect to limiting funds held outside the U.S., the permissibility of certain depositories outside the U.S., and the requirement that FCMs comply with the highest equivalent custody requirement relevant in a different country, these requirements are substantially similar to equivalent requirements adopted in §§ 1.20, 1.22, 1.23, 1.29, 1.30, 1.32 and 22.2 and 22.17. As a result of the adopted changes with the noted exceptions, the rules in § 30.7 for the protection of 30.7 customer funds are substantially similar to the rules for the protection of segregated customer funds under 4d(a) and §§ 1.11–1.32, and the rules for the protection of cleared swaps customer funds under 4d(f) and in part 22. However, portions of § 30.7 are notably different from rules protecting futures customer funds and cleared swap customer funds. These are: (1) the definition of the minimum amount that must be deposited in a 30.7 account for each 30.7 customer is different than in the corresponding requirements in §§ 1.20 and 22.2, due to the possibility of a higher requirement under a foreign regulatory regime; (2) the list of acceptable depositories for 30.7 customer funds includes banks or trusts outside of the U.S. with more than $1 billion in regulatory capital, and various other participants of foreign boards of trade and their depositories; (3) § 30.7 limits the amount of funds from a 30.7 account that can be held outside the U.S; and (4) the Residual Interest Deadline for 30.7 funds is 6:00 p.m. Eastern Time, whereas the Residual Interest Deadline for futures customer funds will, after the phase-in period and absent further Commission action, move back to the time of the daily settlement.

The third and fourth are the only substantive differences in the custody regime created by the adopted amendments compared to the custody regimes put in place in the corresponding sections for domestic

[773] The additional specificity incorporates the same requirements for acknowledgment and agreement that are contained in the templates in the appendices of §§ 1.20 and 1.26.

[774] The same requirements as are adopted for futures customers' funds and Cleared Swaps Customers' Collateral, including a requirement for the FCM to abide by its policies and procedures required by new § 1.11.

futures customer funds and cleared swaps customer funds.

Costs and Benefits

In the NPRM, the Commission stated it believed a significant benefit of the amendments adopted to § 30.7 would be the likelihood that in an FCM insolvency, the full amount owed to customers trading foreign futures and foreign options, whether such customers were foreign or domestic domiciled, would be intact as required to be held separately in 30.7 accounts. The Commission did not receive comments objecting to the changes to the calculations or the required inclusion of foreign-domiciled customers. The adopted changes also established new regulations for the protection of customer funds deposited for trading in foreign futures and options that, with limited exceptions, are substantively identical to the new protections adopted for futures customer funds and cleared swaps customer funds. Therefore, many of the costs and benefits of the changes that are proposed are identical to those described above in the cost-benefit considerations related to §§ 1.11–1.32 and part 22.

Various regulations designed to ensure that the new calculation requirement for the segregation of 30.7 funds is met at all times would also apply, including the § 30.7(g) restrictions on an FCM's withdrawal of its residual interest which is commingled with 30.7 customer funds, and policies and procedures developed by the FCM pursuant to § 1.11 that are designed to ensure safe handling of such funds. Application of the additional protections designed for customer funds will further ensure the protection of market participants and provide, as much as possible, equivalent protections between domestic and foreign futures trading with respect to the treatment of funds held by the FCMs. The Commission did not quantitatively estimate costs of the amendments to § 30.7, but requested comment as to any costs to FCMs, including whether FCMs would need to obtain additional capital or obtain additional liquidity as a result of formally foreclosing their abilities to utilize the Alternative Method versus the Net Liquidating Equity segregation method in funding operations. The Commission did not receive comments addressing these questions, or addressing its analysis that costs and benefits would be incremental to the costs and benefits analyzed with respect to the same substantive provisions applicable to both 4d(a) (futures) and 4d(f) (Cleared Swaps) segregated funds. Moreover, the Commission believes any incremental costs associated with complying with these changes to be minimal, since much of the industry is already held to these standards as a result of previous rule changes made by NFA to its rulebook.[775]

In the NPRM, the Commission proposed in § 30.7(c) a limitation on the amount of funds from a 30.7 account that can be held outside the U.S. Funds held overseas are subject to different regulatory and bankruptcy regimes that may not offer comparable protections for customer funds, creating additional repatriation risks to those funds. For example, if an FCM carrying 30.7 funds, some of which were held in depositories outside the U.S., were to default, it is possible that the Trustee would not be able to promptly recover sufficient funds to repay all the FCM's obligations to 30.7 customers. As noted above, this is especially true if the funds are deposited with a foreign affiliate of the FCM, as the likelihood of coincident bankruptcies of affiliated financial firms has been observed to be exceedingly high.[776] In such an event, the funds held at the foreign affiliate would be distributed in accordance with the insolvency rules of the foreign jurisdiction. In such a case each 30.7 customer would likely receive a pro-rata share of the funds that the Trustee is able recover, when the Trustee is able to recover them. The proposed limit on the amount of funds that can be held outside the U.S. was intended to assure that as much of the customers' funds as possible remain subject to the U.S. regulatory and bankruptcy regimes, eliminating repatriation risk to those funds. By eliminating this risk for a larger percentage of the 30.7 funds, the proposed rule promotes higher recovery rates for 30.7 account funds if the FCM defaults, which helps ensure that 30.7 customers receive the largest (and most prompt) pro rata distribution possible.

The Commission received comments from FIA, as well as others, that the proposed percentage limitation of 10% of required margin was not adequate in light of account volatility and other factors, and that the limitation should only be applicable to funds deposited with foreign brokers and that otherwise FCMs should be permitted to hold funds in a bank or trust company outside the U.S. to the same extent that an FCM may hold other customer segregated and Cleared Swaps Customer collateral outside the U.S.[777] Commenters including Jefferies and Advantage stated that the limitations may inhibit FCMs from trading foreign futures and that customers may need to utilize non-U.S. brokers for their foreign futures business as a result, because they would not be able to accept customer securities outside the U.S. and customers would have to pre-fund with cash instead.[778] In response to commenters and upon consideration, the Commission is increasing the limitation from 10% to 20%, but is declining to further expand the permissibility of holding 30.7 funds outside the U.S. due to the increased repatriation risk applicable to excess margin deposited outside the U.S. for 30.7 funds for foreign futures and foreign options.

For 30.7 accounts, an FCM must maintain residual interest that is at least equal to undermargined amounts by 6:00 p.m. Eastern Time on the following business day, which is substantively similar to the Industry Commenters' Alternative discussed above in the cost and benefit considerations related to § 1.22. As noted there, FIA and ISDA estimated that more than 90% of customer's margin deficits are collected by FCMs by 6:00 p.m. Eastern Time on the next trading day.

Thus, the Commission estimates the additional requisite residual interest needed for 30.7 accounts using the analysis described above for futures customer accounts. As of November 30, 2012, there was approximately $30 billion in 30.7 accounts (excluding, here, and in the following amounts, excess amounts contributed by FCMs).[779] At the top-10 FCMs, there was approximately $27.7 billion in 30.7 accounts.[780] For the remaining FCMs, there was approximately $2.3 billion in 30.7 accounts.[781] Using ISDA's point estimate for excess collateral deposited by customers,[782] the Commission estimates that there was, at the top-10 FCMs, approximately $8.6 billion (31% of $27.7 billion) of existing customer excess in 30.7 accounts. Similarly, for the remaining FCMs, the Commission estimates that there was approximately

[775] *See* NFA Interpretive Notice 9066 (Revised, July 1, 2013).

[776] *See, e.g.,* Lehman, MFGI.

[777] FIA Comment Letter at 36–37 (Feb. 15, 2013); RJ O'Brien Comment Letter at 11 (Feb. 15, 2013).

[778] Jefferies Comment Letter at 6 (Feb. 15, 2013); Advantage Comment Letter at 9 (Feb. 15, 2013).

[779] *See http://www.cftc.gov/MarketReports/FinancialDataforFCMs/HistoricalFCMReports/index.htm.*

[780] *See id.*

[781] *See id.*

[782] As discussed in the analysis of § 1.22(c) above, ISDA estimated the excess to be between $40 and $70 billion and employed the midpoint of this range, $55 billion in its calculations. $55 billion is 31% of the total 177.1 billion held in both section 4d(a)(2) and part 30 secured accounts.

$0.7 billion (31% of $2.3 billion) of customer excess corresponding to 30.7 accounts.

For the top-10 FCMs, the Commission subtracts $8.6 billion (existing customer excess for these accounts) from $27.7 billion (total funds held in these accounts) leaving approximately $19.1 billion in required margin for 30.7 accounts for these FCMs. Multiplying ISDA's 60% required margin estimate (which assumed that the residual interest requirement applies at all times) by 10% (*i.e.,* 1–90%) gives 6% of the required margin being needed in residual interest, or $1.1 billion for these FCMs. As of November 30, 2012, the top-10 FCMs were holding approximately $3.3 billion in residual interest in 30.7 accounts.[783] Thus, it would appear that the top-10 FCMs are already holding sufficient residual interest for 30.7 accounts. For the remaining FCMs, the Commission subtracts $0.7 billion (existing customer excess for these accounts) from $2.3 billion (total funds held in these accounts) giving approximately $1.6 billion in required margin. Multiplying $1.6 billion by 6% gives approximately $96 million, but FCMs already maintain over $1 billion in residual interest. Consequently, it would appear that the remaining FCMs also already maintain enough residual interest for 30.7 accounts.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'')[784] requires Federal agencies, in promulgating regulations, to consider the impact of those regulations on small entities. As stated in the NPRM, the Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[785] The proposed regulations would affect FCMs and DCOs.

The Commission previously has determined that FCMs are not small entities for purposes of the RFA, and, thus, the requirements of the RFA do not apply to FCMs.[786] The Commission's determination was based, in part, upon the obligation of FCMs to meet the minimum financial requirements established by the Commission to enhance the protection of customers' segregated funds and protect the financial condition of FCMs generally.[787] The Commission also has previously determined that DCOs are not small entities for the purpose of the RFA.[788] Accordingly, the Chairman, on behalf of the Commission, certified pursuant to 5 U.S.C. 605(b) that the proposed regulations would not have a significant economic impact on a substantial number of small entities. The Commission then invited public comment on this determination. The Commission received no comments.

B. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA'') provides that a federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number issued by the Office of Management and Budget (''OMB'').[789] This final rulemaking contains several collections of information that were submitted to OMB in the form of proposed amendments to existing collection 3038–0024 and proposed revisions thereto, as well as pre-existing collections 3038–0052 and 3038–0091. There have been no substantive changes from the proposed rulemaking to this final rulemaking that would require any adjustment to the information collection burdens as they were originally proposed. As required by OMB regulations, the Commission shall submit to OMB this final rulemaking, together with ICRs that have been updated to include the comment summary contained herein.

The collections contained in this rulemaking are mandatory collections. In formulating burden estimates for the collections in this rulemaking, to avoid double accounting of information collections that already have been assigned control numbers by OMB, or are covered as burden hours in collections of information pending before OMB, the PRA analysis provided in the proposed rulemaking, along with the information collection request (''ICR'') with burden estimates that were incorporated into the rulemaking by reference and submitted to OMB, accounted only burden estimates for collections of information that have not previously been submitted to OMB. The Commission sought comment on the collections of information contained in the proposed rulemaking only to the extent that the collections in the proposed rulemaking would increase the burden hours contained with respect to each of the related currently valid or proposed collections.

The Commission received over 120 written submissions on the proposed rulemaking. Many of these comments discussed in general the need for, effectiveness of, and practicality of various proposed rules. However, none of the commenters questioned the burden estimates provided in the proposed rulemaking or the ICR that was submitted. To the extent that there were comments on the need for, effectiveness and practicality of various proposed rules, they related to the rulemaking as a whole rather than the collections in particular. Accordingly, those comments were addressed above, in the sections of the preamble of this final rulemaking that relate specifically to the proposed rules at issue.

As required by the PRA, the Commission submitted the proposed amendments, in the form of information collection requests related to collections 3038–0024, 3038–0052, and 3038–0091 on November 14, 2012, the same date that the proposed rulemaking was published in the **Federal Register**.[790] The Commission did not receive public comments on any of the proposed collections from OMB on or before January 13, 2013, within the 60 days established for such comments in the PRA after the notice of proposed rulemaking and the submission of the certified ICR to OMB.[791] Accordingly, the proposed amendments to collections 3038–0024, 3038–0052, and 3038–0091 are deemed to be approved by operation of the PRA.[792] The Commission therefore, pursuant to OMB regulations,[793] requests the assignment of OMB control numbers to the proposed amendments to collections 3038–0024, 3038–0052, and 3038–0091, which were submitted to OMB for approval on November 14, 2012.

[784] 5 U.S.C. 601 et seq.

[785] 47 FR 18618 (Apr. 30, 1982).

[786] *Id.* at 18619.

[787] *Id.*

[788] *See* 66 FR 45605, 45609 (Aug. 29, 2001).

[789] 44 U.S.C. 3501 *et seq.*

[790] *See* 44 U.S.C. 3507(d)(1)(A), providing for an agency to forward to the Director of OMB or his or her designee a notice of proposed rulemaking with a collection of information subject to notice and comment pursuant to the provisions of 44 U.S.C. 3506(c)(2)(B), on or before the date that the proposed rulemaking is published in the **Federal Register**, together with the ICR in the form required by OMB in 5 CFR 1320.8 and 1320.9.

[791] *See* 44 U.S.C. 3507(d)(1)(B), cross-referencing 44 U.S.C. 3508. *See also* 5 CFR 1320.11(c).

[792] *See* 44 U.S.C. 3507(3).

[793] *See* 5 CFR 1320.11(i), implementing 44 U.S.C. 3507(d)(3).

APPENDIX 1 TO SUPPLEMENTARY INFORMATION—TABLE OF COMMENT LETTERS

Abbreviation used (if applicable)	Full name
Advantage	Advantage Futures LLC.
AFMP Group	Agricultural Futures Market Participants: AMCOT, American Cotton Shippers Association, American Farm Bureau Federation, American Feed Industry Association, American Soybean Association, CoBank, Commodity Markets Council, National Association of Wheat Growers, National Barley Growers Association, National Cattlemen's Beef Association, National Corn Growers Association, National Cotton Council, National Council of Farmer Co-operatives, National Grain and Feed Association, National Pork Producers Council, National Sorghum Producers, National Sunflower Association, North American Millers Association, USA Rice Federation, US Canola Association, US Dry Bean Council.
AIMA	Alternative Investment Management Association.
Amarillo	Amarillo Brokerage Co.
ACLI	American Council of Life Insurers.
AFBF	American Farm Bureau Federation.
AICPA	American Institute of Certified Public Accountants.
AIM	American Iron & Metal.
BlackRock	BlackRock, Inc.
Depository Bank Group	BMO Harris Bank, Barclays Bank, The Bank of New York Mellon and Brown Brothers Harriman & Co.
Center for Audit Quality	Center for Audit Quality.
CFA	CFA Institute.
Chris Barnard	Chris Barnard.
CHS Hedging	CHS Hedging, Inc.
CME	CME Group Inc.
CoBank	CoBank.
Commercial Energy Working Group.	Commercial Energy Working Group.
CIEBA	Committee on Investment of Employee Benefit Assets.
CCC	Commodity Customer Coalition.
Congressional Committees	Congress of the United States: Frank D. Lucas, House Committee on Agricultural; Debbie Stabenow, Senate Committee on Agriculture, Nutrition, and Forestry.
Deloitte	Deloitte & Touche.
Ernst & Young	Ernst & Young LLP.
Eurex	Eurex Clearing AG.
FHLB	Federal Home Loan Banks.
Federal Reserve Banks	Federal Reserve Banks of New York and Chicago.
FXCM	Forex Capital Markets LLC.
Franklin	Franklin Templeton Investments.
Frontier Futures	Frontier Futures, Inc.
FIA	Futures Industry Association (Collectively—Barclays, State Street, Goldman Sachs, others).
Global Commodity	Global Commodity Analytics & Consulting LLC.
ISRI	Institute of Scrap Recycling Industries, Inc.
ISDA	International Swap Dealers Association, Inc.
FCStone	INTL FCStone, Inc.
ICI	Investment Company Institute.
ICA	Iowa Cattlemen's Association.
Jefferies	Jefferies Bache, LLC.
JSA	John Stewart and Associates.
JAC	Joint Audit Committee.
Katten-FIA	Katten Muchin Rosenman LLP on behalf of the Futures Industry Association.
KPMG	KPMG LLP.
Kripke Enterprises	Kripke Enterprises.
LCH.Clearnet	LCH.Clearnet Group Limited.
MFA	Managed Funds Association.
Manitoba	Manitoba Corporation.
MGEX	Minneapolis Grain Exchange, Inc.
NCBA	National Cattlemen's Beef Association.
NCFC	National Council of Farmer Cooperatives.
NFA	National Futures Association.
NGFA	National Grain and Feed Association.
NIBA	National Introducing Brokers Association.
NPPC	National Pork Producers Council.
NEFI/PMAA	New England Fuel Institute Petroleum Marketers Association of America.
NYPC	New York Portfolio Clearing, LLC.
Newedge	Newedge USA, LLC.
Nodal	Nodal Exchange, LLC.
Paul/Weiss	Paul, Weiss, Rifkind, Wharton & Garrison LLP.
Phillip Futures Inc.	Phillip Futures Inc.
Pilot Flying J	Pilot Travel Centers, LLC.
Premier Metal Services	Premier Metal Services, LLC.
Prudential	The Prudential Insurance Company of America.
PWC	PWC LLP.
Randy Fritsche	Randy Fritsche.
Rice Dairy LLC	Rice Dairy LLC.

APPENDIX 1 TO SUPPLEMENTARY INFORMATION—TABLE OF COMMENT LETTERS—Continued

Abbreviation used (if applicable)	Full name
RJ O'Brien	R.J. O'Brien & Associates, LLC.
RCG	Rosenthal Collins Group.
Schippers	Schippers Trading.
Schwartz & Ballen	Schwartz & Ballen LLP.
Security Benefit	Security Benefit Life Insurance Company.
SIFMA	SIFMA Asset Management Group.
Solomon Metals Corp.	Solomon Metals Corp.
State Street	State Street Corporation.
Steve Jones	Steve Jones.
SUNY Buffalo	State University of New York at Buffalo Law School.
TD Ameritrade	TD Ameritrade, Inc.
TCFA	Texas Cattle Feeder Association.
TIAA–CREF	TIAA–CREF.
Strelitz/California Metal X	Tim Strelitz/California Metal X.
Vanguard	Vanguard.

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Appendix 2 to Supplementary Information—CFTC Form 1–FR–FCM

Name of Company: Employer ID No: NFA ID No:

CFTC FORM 1-FR-FCM
STATEMENT OF FINANCIAL CONDITION
AS OF __/__/____

Assets

	Current	Non-Current	Total
1. Funds segregated or in separate accounts pursuant to the CEAct and the Regulations			
A. U.S. exchanges (page 11, line 13)	$ 0 [1000]		$ 0 [1005]
B. Dealer options (page 12, line 2.C.)	0 [1010]		0 [1015]
C. Foreign exchanges (page 14, line 8)	0 [1020]	$ 0 [1025]	0 [1030]
D. Cleared Swaps (page XX, line X)	0 [XXX]	0 [XXX]	0 [XXX]
(Do not Duplicate line 1. assets below)			
2. Cash	0 [1040]	0 [1045]	0 [1050]
3. Securities, at market value			
A. Firm owned	0 [1055]	0 [1060]	0 [1065]
B. Noncustomer-owned	0 [1070]		0 [1075]
C. Individual partners' and members' security accounts	0 [1090]		0 [1095]
D. Stock in clearing organizations	0 [1100]	0 [1105]	0 [1110]
4. Securities purchased under resale agreements	0 [1115]	0 [1120]	0 [1125]
5. Receivables from and deposits with U.S. derivatives clearing organizations			
A. Margins	0 [1130]		0 [1135]
B. Settlement receivable	0 [1140]		0 [1145]
C. Guarantee deposits	0 [1150]		0 [1155]
D. Net long options value	0 [1157]		0 [1158]
6. Receivables from and deposits with foreign commodity clearing organizations			
A. Margins	0 [1160]	0 [1165]	0 [1170]
B. Settlement receivable	0 [1175]		0 [1180]
C. Guarantee deposits	0 [1182]	0 [1185]	0 [1190]
D. Net long options value	0 [1191]	0 [1192]	0 [1193]
7. Receivables from registered FCMs			
A. Net liquidating equity	0 [1195]	0 [1200]	0 [1205]
B. Security deposits		0 [1210]	0 [1215]
C. Other	0 [1220]	0 [1225]	0 [1230]
8. Receivables from foreign commodity brokers			
A. Net liquidating equity	0 [1235]	0 [1240]	0 [1245]
B. Security deposits		0 [1250]	0 [1255]
C. Other	0 [1260]	0 [1265]	0 [1270]

9. Receivables from traders on U.S. commodity exchanges			
A. Customer debit and deficit accounts	$ - 1275	1280	$ - 1285
B. Noncustomer and proprietary accounts	1290	1295	1300
C. Other	1305	1310	1315
D. Allowance for doubtful accounts		1320	1325
10. Receivables from traders on foreign boards of trade			
A. Customer debit and deficit accounts	1330	1335	1340
B. Noncustomer and proprietary accounts	1345	1350	1355
C. Other	1360	1365	1370
D. Allowance for doubtful accounts		1375	1380
11. Inventories of cash commodities, raw materials, work in progress and finished goods			
A. Covered	1385	1390	1395
B. Not covered	1400	1405	1410
12. Secured demand notes	1425	1430	1435
Value of collateral $________ 1415			
Safety factor $________ 1420			
13. Other receivables and advances			
A. Merchandising accounts receivable	1440	1445	1450
B. Notes receivable	1455	1460	1465
C. Commissions and brokerage receivable	1470	1475	1480
D. Receivables from employees and associated persons	1485	1490	1495
E. Advances on cash commodities	1500	1505	1510
F. Dividends and interest	1515	1520	1525
G. Taxes receivable	1530	1535	1540
H. Receivables from subsidiaries and affiliates	1545	1550	1555
I. Other (Itemize on a separate page)	1560	1565	1570
J. Allowance for doubtful accounts		1575	1580
14. Unrealized gains on forward contracts and commitments	1585	1590	1595
15. Exchange memberships at cost			
Market value $________ 1600		1605	1610
16. Investments in subsidiaries	1612	1615	1620
17. Plant, property, equipment and capitalized leases cost net of accumulated depreciation and amortization of $________ 1625	1630	1635	1640
18. Prepaid expenses and deferred charges		1645	1650
19. A. Other assets (itemize on separate page)	1655	1660	1665
B. Retail Forex Aggregate Assets	xxxx	xxxx	xxxx
20. Total Assets	1670	1675	1680

Name of Company: Employer ID No: NFA ID No:

CFTC FORM 1-FR-FCM
STATEMENT OF FINANCIAL CONDITION
AS OF __/__/____

Liabilities & Ownership Equity

Liabilities

21. Payables to banks		
A. Secured loans		2000
B. Unsecured loans		2010
C. Overdrafts		2020
22. Equities in commodity accounts and cleared swaps accounts		
A. Customers trading on U.S. commodity exchanges		2030
B. Customers trading on foreign exchanges		2040
C. Customers' dealer option accounts		2050
D. Noncustomers' accounts		2060
E. General partners' and members' trading accounts (not included in capital)		2070
F. Customers trading cleared swaps		XXXX
23. Payable to U.S. derivatives clearing organizations		2080
Including short option value $ 0		
24. Payable to foreign commodity clearing organizations		2090
Including short option value $ 0		
25. Payable to registered futures commission merchants		2100
26. Payable to foreign commodity brokers		2110
27. Accounts payable, accrued expenses and other payables		
A. Accounts payable and accrued expenses		2120
B. Salaries, wages, commissions and bonuses payable		2130
C. Taxes payable		2140
D. Deferred income taxes		2150
E. Security deposits held		2160
F. Advances against commodities		2170
G. Unrealized losses on forward contracts and commitments		2180
H. Due to subsidiaries and affiliates		2190
I. Notes, mortgages and other payables due within twelve months		2200
J. Obligation to Retail FX Customers		XXXXX
K. Other (itemize on a separate page)		2210
28. Notes, mortgages and other payables not due within twelve months of the date of this statement		
A. Unsecured		2220
B. Secured		2230

Name of Company: Employer ID No: NFA ID No:

CFTC FORM 1-FR-FCM
STATEMENT OF SEGREGATION REQUIREMENTS AND FUNDS IN SEGREGATION
FOR CUSTOMERS TRADING ON U.S. COMMODITY EXCHANGES
AS OF xx/xx/xxxx

SEGREGATION REQUIREMENTS (Section 4d(2) of the CEAct)				
1. Net ledger balance				
A. Cash			$ 0	5000
B. Securities (at market)			0	5010
2. Net unrealized profit (loss) in open futures contracts traded on a contract market			0	5020
3. Exchange traded options				
A. Market value of open option contracts purchased on a contract market			0	5030
B. Market value of open option contracts granted (sold) on a contract market			0	5040
4. Net equity (deficit) (add lines 1, 2, and 3)			$ 0	5050
5. Accounts liquidating to a deficit and accounts with debit balances - gross amount	$ 0	5060		
Less: amount offset by customer owned securities	0	5070	0	5080
6. Amount required to be segregated (add lines 4 and 5)			$ 0	5090
FUNDS IN SEGREGATED ACCOUNTS				
7. Deposited in segregated funds bank accounts				
A. Cash			$ 0	5100
B. Securities representing investment of customers' funds (at market)			0	5110
C. Securities held for particular customers or option customers in lieu of cash (at market)			0	5120
8. Margins on deposit with derivatives clearing organizations of contract markets				
A. Cash			0	5130
B. Securities representing investments of customers' funds (at market)			0	5140
C. Securities held for particular customers or option customers in lieu of cash (at market)			0	5150
9. Net settlement from (to) derivatives clearing organizations of contract markets			0	5160
1				
A. Value of open long option contracts			0	5170
B. Value of open short option contracts			0	5180
11. Net equities with other FCMs				
A. Net liquidating equity			0	5190
B. Securities representing investments of customers' funds (at market)			0	5200
C. Securities held for particular customers or option customers in lieu of cash (at market)			0	5210
12. Segregated funds on hand (describe:)			0	5215
13. Total amount in segregation (add lines 7 through 12)			$ 0	5220
14. Excess (deficiency) funds in segregation (subtract line 6 from line 13)			$ 0	5230
15. Management Target Amount for Excess funds in segregation			$ 0	5240
16. Excess (deficiency) funds in segregation over (under) Management Target Amount Excess			$ 0	5250

Name of Company: Employer ID No: NFA ID No:

CFTC FORM 1-FR-FCM
STATEMENT OF SECURED AMOUNTS AND FUNDS HELD IN SEPARATE ACCOUNTS
PURSUANT TO COMMISSION REGULATION 30.7
AS OF xx/xx/xxxx

FOREIGN FUTURES AND FOREIGN OPTIONS SECURED AMOUNTS

Amount required to be set aside pursuant to law, rule or regulation of a foreign government or a rule of a self-regulatory organization authorized thereunder		
1. Net ledger balance - Foreign Futures and Foreign Options Trading - All Customers		
A. Cash		$ 0
B. Securities (at market)		0
2. Net unrealized profit (loss) in open futures contracts traded on a foreign board of trade		0
3. Exchange traded options		
A. Market value of open option contracts purchased on a foreign board of trade		0
B. Market value of open option contracts granted (sold) on a foreign board of trade		0
4. Net equity (deficit) (add lines 1, 2, and 3)		$ 0
5. Accounts liquidating to a deficit and accounts with debit balances - gross amount	$ 0	
Less: amount offset by customer owned securities	0	0
6. Amount required to be set aside as the secured amount - Net Liquidating Equity Method (add lines 4 and 5)		$ 0
7. Greater of amount required to be set aside pursuant to foreign jurisdiction (above) or line 6.		$ 0

Name of Company: Employer ID No: NFA ID No:

CFTC FORM 1-FR-FCM

STATEMENT OF SECURED AMOUNTS AND FUNDS HELD IN SEPARATE ACCOUNTS

PURSUANT TO COMMISSION REGULATION 30.7

AS OF xx/xx/xxxx

FUNDS DEPOSITED IN SEPARATE REGULATION 30.7 ACCOUNTS

1. Cash in Banks					
A. Banks located in the United States		$ 0	5700		
B. Other Banks qualified under Regulation 30.7					
Name(s):	5710	0	5720	$ 0	5730
2. Securities					
A. In safekeeping with banks located in the United States		$ 0	5740		
B. In safekeeping with other banks qualified under Regulation 30.7					
Name(s):	5750	0	5760	0	5770
3. Equities with registered futures commission merchants					
A. Cash		$ 0	5780		
B. Securities		0	5790		
C. Unrealized gain (loss) on open futures contracts		0	5800		
D. Value of long option contracts		0	5810		
E. Value of short option contracts		0	5815	0	5820
4. Amounts held by clearing organizations of foreign boards of trade					
Name(s):	5830				
A. Cash		$ 0	5840		
B Securities		0	5850		
C. Amount due to (from) clearing organization - daily variation		0	5860		
D. Value of long option contracts		0	5870		
E. Value of short option contracts		0	5875	0	5880
5. Amounts held by members of foreign boards of trade					
Name(s):	5890				
A. Cash		$ 0	5900		
B. Securities		0	5910		
C. Unrealized gain (loss) on open futures contracts		0	5920		
D. Value of long option contracts		0	5930		
E. Value of short option contracts		0	5935	0	5940
6. Amounts with other depositories designated by a foreign board of trade					
Name(s):	5950			0	5960
7. Segregated funds on hand (describe:)				0	5965
8. Total funds in separate section 30.7 accounts (to page 13, line 2)				$ 0	5970
9. Excess (deficiency) Set Aside Funds for Secured Amount (subtract line 7 Secured Statement Page 1 from Line 8)				$ 0	
10. Management Target Amount for Excess funds in separate section 30.7 accounts				$ 0	
11. Excess (defiency) funds in separate section 30.7 accounts over (under) Management Target Excess				$ 0	

Name of Company: Employer ID No: NFA ID No:

CFTC FORM 1-FR-FCM — SEC FOCUS II — SEC FOCUS II CSE

STATEMENT OF CLEARED SWAPS CUSTOMER SEGREGATION REQUIREMENTS AND FUNDS IN CLEARED SWAPS CUSTOMER ACCOUNTS UNDER 4D(F) OF THE CEA

Cleared Swaps Customer Requirements				
1. Net ledger balance				
A. Cash			$ 0	X500
B. Securities (at market)			$ 0	X510
2. Net unrealized profit (loss) in open cleared swaps			$ 0	X520
3. Cleared swaps options				
A. Market value of open cleared swaps option contracts purchased			$ 0	X530
B. Market value of open cleared swaps option contracts granted (sold)			$ 0	X540
4. Net equity (deficit) (add lines 1, 2, and 3)			$ 0	X550
5. Accounts liquidating to a deficit and accounts with debit balances - gross amount	$ 0	X560		
Less: amount offset by customer owned securities	$ 0	X570	$ 0	X580
6. Amount required to be segregated for cleared swaps customers (add lines 4 and 5)			$ 0	X590
Funds in Cleared Swaps Customer Segregated Accounts				
7. Deposited in cleared swaps customer segregated accounts at banks				
A. Cash			$ 0	X600
C. Securities representing investments of cleared swaps customers' funds (at market)			$ 0	X610
E. Securities held for particular cleared swaps customers in lieu of cash (at market)			$ 0	X620
8. Margins on deposit with derivatives clearing organizations in cleared swaps customer segregated accounts				
A. Cash			$ 0	X630
B. Securities representing investments of cleared swaps customers' funds (at market)			$ 0	X640
C. Securities held for particular cleared swaps customers in lieu of cash (at market)			$ 0	X650
9. Net settlement from (to) derivatives clearing organizations			$ 0	X660
10. Cleared swaps options				
A. Value of open cleared swaps long option contracts			$ 0	X670
B. Value of open cleared swaps short option contracts			$ 0	8680
11. Net equities with other FCMs				
A. Net liquidating equity			$ 0	X690
B. Securities representing investments of cleared swaps customers' funds (at market)			$ 0	X700
C. Securities held for particular cleared swaps customers in lieu of cash (at market)			$ 0	X710
12. Cleared swaps customer funds on hand (describe:)			$ 0	X715
13. Total amount in cleared swaps customer segregation (add lines 7 through 12)			$ 0	X720
14. Excess (deficiency) funds in cleared swaps customer segregation (subtract line 6 from line 13)			$ 0	X730
15. Management Target Amount for Excess funds in cleared swaps segregated accounts			$ 0	
16. Excess (Deficiency) funds in cleared swaps customer segregated accounts over (under) Management Target Excess			$ 0	

BILLING CODE 6351–01–C

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 3

Associated persons, Brokers, Commodity futures, Customer protection, Major swap participants, Registration, Swap dealers.

17 CFR Part 22

Brokers, Clearing, Consumer protection, Reporting and recordkeeping requirements, Swaps.

17 CFR Part 30

Commodity futures, Consumer protection, Currency, Reporting and recordkeeping requirements.

17 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR parts 1, 3, 22, 30, and 140 as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

■ 1. The authority citation for part 1 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a–1, 7a–2, 7b, 7b–3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

■ 2. Amend § 1.3 to revise paragraph (rr) to read as follows:

§ 1.3 Definitions.

* * * * *

(rr) *Foreign futures or foreign options secured amount.* This term means all money, securities and property received by a futures commission merchant from, for, or on behalf of 30.7 customers as defined in § 30.1 of this chapter:

(1) To margin, guarantee, or secure foreign futures contracts and all money accruing to such 30.7 customers as the result of such contracts;

(2) In connection with foreign options transactions representing premiums payable or premiums received, or to guarantee or secure performance on such transactions; and

(3) All money accruing to such 30.7 customers as the result of trading in

foreign futures contracts or foreign options.

* * * * *

■ 3. Amend § 1.10 to:

■ a. Revise paragraph (b)(1)(ii);

■ b. Add paragraph (b)(5); and

■ c. Revise paragraphs (c)(1), (c)(2)(i), (d)(1)(v), (d)(2)(iv), (d)(2)(vi), and (g)(2)(ii).

The revisions and addition read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

* * * * *

(b) * * *

(1) * * *

(ii) In addition to the monthly financial reports required by paragraph (b)(1)(i) of this section, each person registered as a futures commission merchant must file a Form 1–FR–FCM as of the close of its fiscal year, which must be certified by an independent public accountant in accordance with § 1.16, and must be filed no later than 60 days after the close of the futures commission merchant's fiscal year: *Provided, however,* that a registrant which is registered with the Securities and Exchange Commission as a securities broker or dealer must file this report not later than the time permitted for filing an annual audit report under § 240.17a–5(d)(5) of this title.

* * * * *

(5) Each futures commission merchant must file with the Commission the measure of the future commission merchant's leverage as of the close of the business each month. For purpose of this section, the term ''leverage'' shall be defined by a registered futures association of which the futures commission merchant is a member. The futures commission merchant is required to file the leverage information with the Commission within 17 business days of the close of the futures commission merchant's month end.

(c) *Where to file reports.* (1) Form 1–FR filed by an introducing broker pursuant to paragraph (b)(2) of this section need be filed only with, and will be considered filed when received by, the National Futures Association. Other reports or information provided for in this section will be considered filed when received by the Regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located (as set forth in § 140.02 of this chapter) and by the designated self-regulatory organization, if any; and reports or other information required to be filed by this section by an applicant for registration will be considered filed when received by the National Futures Association. Any report or information filed with the National Futures Association pursuant to this paragraph shall be deemed for all purposes to be filed with, and to be the official record of, the Commission.

(2)(i) All filings or other notices prepared by a futures commission merchant pursuant to this section must be submitted to the Commission in electronic form using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission, if the futures commission merchant or a designated self-regulatory organization has provided the Commission with the means necessary to read and to process the information contained in such report. A Form 1–FR required to be certified by an independent public accountant in accordance with § 1.16 which is filed by a futures commission merchant must be filed electronically.

* * * * *

(d) * * *

(1) * * *

(v) For a futures commission merchant only, the statements of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, the statement of secured amounts and funds held in separate accounts for 30.7 customers (as defined in § 30.1 of this chapter) in accordance with § 30.7 of this chapter, and the statement of cleared swaps customer segregation requirements and funds in cleared swaps customer accounts under section 4d(f) of the Act as of the date for which the report is made; and

* * * * *

(2) * * *

(iv) For a futures commission merchant only, the statements of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, the statement of secured amounts and funds held in separate accounts for 30.7 customers (as defined in § 30.1 of this chapter) in accordance with § 30.7 of the chapter, and the statement of cleared swaps customers segregation requirements and funds in cleared swaps customer accounts under section 4d(f) of the Act as of the date for which the report is made;

* * * * *

(vi) A reconciliation, including appropriate explanations, of the statement of the computation of the minimum capital requirements pursuant to § 1.17 and, for a futures commission merchant only, the statements of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer option accounts, the statement of secured amounts and funds held in separate accounts for 30.7 customers (as defined in § 30.1 of this chapter) in accordance with § 30.7 of this chapter, and the statement of cleared swaps customer segregation requirements and funds in cleared swaps customer accounts under section 4d(f) of the Act, in the certified Form 1–FR with the applicant's or registrant's corresponding uncertified most recent Form 1–FR filing when material differences exist or, if no material differences exist, a statement so indicating; and

* * * * *

(g) * * *

(2) * * *

(ii) The following statements and footnote disclosures thereof: the Statement of Financial Condition in the certified annual financial reports of futures commission merchants and introducing brokers; the Statements (to be filed by a futures commission merchant only) of Segregation Requirements and Funds in Segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, the Statement (to be filed by a futures commission merchant only) of Secured Amounts and Funds held in Separate Accounts for 30.7 Customers (as defined in § 30.1 of this chapter) in accordance with § 30.7 of this chapter, and the Statement (to be filed by futures commission merchants only) of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under section 4d(f) of the Act.

* * * * *

■ 4. Add § 1.11 to read as follows:

§ 1.11 Risk Management Program for futures commission merchants.

(a) *Applicability.* Nothing in this section shall apply to a futures commission merchant that does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result from soliciting or accepting orders for the purchase or sale of any commodity interest.

(b) *Definitions.* For purposes of this section:

(1) *Business unit* means any department, division, group, or

personnel of a futures commission merchant or any of its affiliates, whether or not identified as such that:

(i) Engages in soliciting or in accepting orders for the purchase or sale of any commodity interest and that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or

(ii) Otherwise handles segregated funds, including managing, investing, and overseeing the custody of segregated funds, or any documentation in connection therewith, other than for risk management purposes; and

(iii) Any personnel exercising direct supervisory authority of the performance of the activities described in paragraph (b)(1)(i) or (ii) of this section.

(2) *Customer* means a futures customer as defined in § 1.3, Cleared Swaps Customer as defined in § 22.1 of this chapter, and 30.7 customer as defined in § 30.1 of this chapter.

(3) *Governing body* means the proprietor, if the futures commission merchant is a sole proprietorship; a general partner, if the futures commission merchant is a partnership; the board of directors if the futures commission merchant is a corporation; the chief executive officer, the chief financial officer, the manager, the managing member, or those members vested with the management authority if the futures commission merchant is a limited liability company or limited liability partnership.

(4) *Segregated funds* means money, securities, or other property held by a futures commission merchant in separate accounts pursuant to § 1.20 for futures customers, pursuant to § 22.2 of this chapter for Cleared Swaps Customers, and pursuant to § 30.7 of this chapter for 30.7 customers.

(5) *Senior management* means, any officer or officers specifically granted the authority and responsibility to fulfill the requirements of senior management by the governing body.

(c) *Risk Management Program.* (1) Each futures commission merchant shall establish, maintain, and enforce a system of risk management policies and procedures designed to monitor and manage the risks associated with the activities of the futures commission merchant as such. For purposes of this section, such policies and procedures shall be referred to collectively as a ‘‘Risk Management Program.’’

(2) Each futures commission merchant shall maintain written policies and procedures that describe the Risk Management Program of the futures commission merchant.

(3) The Risk Management Program and the written risk management policies and procedures, and any material changes thereto, shall be approved in writing by the governing body of the futures commission merchant.

(4) Each futures commission merchant shall furnish a copy of its written risk management policies and procedures to the Commission and its designated self-regulatory organization upon application for registration and thereafter upon request.

(d) *Risk management unit.* As part of the Risk Management Program, each futures commission merchant shall establish and maintain a risk management unit with sufficient authority; qualified personnel; and financial, operational, and other resources to carry out the risk management program established pursuant to this section. The risk management unit shall report directly to senior management and shall be independent from the business unit.

(e) *Elements of the Risk Management Program.* The Risk Management Program of each futures commission merchant shall include, at a minimum, the following elements:

(1) *Identification of risks and risk tolerance limits.* (i) The Risk Management Program shall take into account market, credit, liquidity, foreign currency, legal, operational, settlement, segregation, technological, capital, and any other applicable risks together with a description of the risk tolerance limits set by the futures commission merchant and the underlying methodology in the written policies and procedures. The risk tolerance limits shall be reviewed and approved quarterly by senior management and annually by the governing body. Exceptions to risk tolerance limits shall be subject to written policies and procedures.

(ii) The Risk Management Program shall take into account risks posed by affiliates, all lines of business of the futures commission merchant, and all other trading activity engaged in by the futures commission merchant. The Risk Management Program shall be integrated into risk management at the consolidated entity level.

(iii) The Risk Management Program shall include policies and procedures for detecting breaches of risk tolerance limits set by the futures commission merchant, and alerting supervisors within the risk management unit and senior management, as appropriate.

(2) *Periodic Risk Exposure Reports.* (i) The risk management unit of each futures commission merchant shall provide to senior management and to its governing body quarterly written reports setting forth all applicable risk exposures of the futures commission merchant; any recommended or completed changes to the Risk Management Program; the recommended time frame for implementing recommended changes; and the status of any incomplete implementation of previously recommended changes to the Risk Management Program. For purposes of this section, such reports shall be referred to as ‘‘Risk Exposure Reports.’’ The Risk Exposure Reports also shall be provided to the senior management and the governing body immediately upon detection of any material change in the risk exposure of the futures commission merchant.

(ii) *Furnishing to the Commission.* Each futures commission merchant shall furnish copies of its Risk Exposure Reports to the Commission within five (5) business days of providing such reports to its senior management.

(3) *Specific risk management considerations.* The Risk Management Program of each futures commission merchant shall include, but not be limited to, policies and procedures necessary to monitor and manage the following risks:

(i) *Segregation risk.* The written policies and procedures shall be reasonably designed to ensure that segregated funds are separately accounted for and segregated or secured as belonging to customers as required by the Act and Commission regulations and must, at a minimum, include or address the following:

(A) A process for the evaluation of depositories of segregated funds, including, at a minimum, documented criteria that any depository that will hold segregated funds, including an entity affiliated with the futures commission merchant, must meet, including criteria addressing the depository’s capitalization, creditworthiness, operational reliability, and access to liquidity. The criteria should further consider the extent to which segregated funds are concentrated with any depository or group of depositories. The criteria also should include the availability of deposit insurance and the extent of the regulation and supervision of the depository;

(B) A program to monitor an approved depository on an ongoing basis to assess its continued satisfaction of the futures commission merchant’s established criteria, including a thorough due diligence review of each depository at least annually;

(C) An account opening process for depositories, including documented authorization requirements, procedures that ensure that segregated funds are not deposited with a depository prior to the futures commission merchant receiving the acknowledgment letter required from such depository pursuant to § 1.20, and §§ 22.2 and 30.7 of this chapter, and procedures that ensure that such account is properly titled to reflect that it is holding segregated funds pursuant to the Act and Commission regulations;

(D) A process for establishing a targeted amount of residual interest that the futures commission merchant seeks to maintain as its residual interest in the segregated funds accounts and such process must be designed to reasonably ensure that the futures commission merchant maintains the targeted residual amounts and remains in compliance with the segregated funds requirements at all times. The policies and procedures must require that senior management, in establishing the total amount of the targeted residual interest in the segregated funds accounts, perform appropriate due diligence and consider various factors, as applicable, relating to the nature of the futures commission merchant's business including, but not limited to, the composition of the futures commission merchant's customer base, the general creditworthiness of the customer base, the general trading activity of the customers, the types of markets and products traded by the customers, the proprietary trading of the futures commission merchant, the general volatility and liquidity of the markets and products traded by customers, the futures commission merchant's own liquidity and capital needs, and the historical trends in customer segregated fund balances, including undermargined amounts and net deficit balances in customers' accounts. The analysis and calculation of the targeted amount of the future commission merchant's residual interest must be described in writing with the specificity necessary to allow the Commission and the futures commission merchant's designated self-regulatory organization to duplicate the analysis and calculation and test the assumptions made by the futures commission merchant. The adequacy of the targeted residual interest and the process for establishing the targeted residual interest must be reassessed periodically by Senior Management and revised as necessary;

(E) A process for the withdrawal of cash, securities, or other property from accounts holding segregated funds, where the withdrawal is not for the purpose of payments to or on behalf of the futures commission merchant's customers. Such policies and procedures must satisfy the requirements of § 1.23, § 22.17 of this chapter, or § 30.7 of this chapter, as applicable;

(F) A process for assessing the appropriateness of specific investments of segregated funds in permitted investments in accordance with § 1.25. Such policies and procedures must take into consideration the market, credit, counterparty, operational, and liquidity risks associated with such investments, and assess whether such investments comply with the requirements in § 1.25 including that the futures commission merchant manage the permitted investments consistent with the objectives of preserving principal and maintaining liquidity;

(G) Procedures requiring the appropriate separation of duties among individuals responsible for compliance with the Act and Commission regulations relating to the protection and financial reporting of segregated funds, including the separation of duties among personnel that are responsible for advising customers on trading activities, approving or overseeing cash receipts and disbursements (including investment operations), and recording and reporting financial transactions. The policies and procedures must require that any movement of funds to affiliated companies and parties are properly approved and documented;

(H) A process for the timely recording of all transactions, including transactions impacting customers' accounts, in the firm's books of record;

(I) A program for conducting annual training of all finance, treasury, operations, regulatory, compliance, settlement, and other relevant officers and employees regarding the segregation requirements for segregated funds required by the Act and regulations, the requirements for notices under § 1.12, procedures for reporting suspected breaches of the policies and procedures required by this section to the chief compliance officer, without fear of retaliation, and the consequences of failing to comply with the segregation requirements of the Act and regulations; and

(J) Policies and procedures for assessing the liquidity, marketability and mark-to-market valuation of all securities or other non-cash assets held as segregated funds, including permitted investments under § 1.25, to ensure that all non-cash assets held in the customer segregated accounts, both customer-owned securities and investments in accordance with § 1.25, are readily marketable and highly liquid. Such policies and procedures must require daily measurement of liquidity needs with respect to customers; assessment of procedures to liquidate all non-cash collateral in a timely manner and without significant effect on price; and application of appropriate collateral haircuts that accurately reflect market and credit risk.

(ii) *Operational risk.* The Risk Management Program shall include automated financial risk management controls reasonably designed to prevent the placing of erroneous orders, including those that exceed pre-set capital, credit, or volume thresholds. The Risk Management Program shall ensure that the use of automated trading programs is subject to policies and procedures governing the use, supervision, maintenance, testing, and inspection of such programs.

(iii) *Capital risk.* The written policies and procedures shall be reasonably designed to ensure that the futures commission merchant has sufficient capital to be in compliance with the Act and the regulations, and sufficient capital and liquidity to meet the reasonably foreseeable needs of the futures commission merchant.

(4) *Supervision of the Risk Management Program.* The Risk Management Program shall include a supervisory system that is reasonably designed to ensure that the policies and procedures required by this section are diligently followed.

(f) *Review and testing.* (1) The Risk Management Program of each futures commission merchant shall be reviewed and tested on at least an annual basis, or upon any material change in the business of the futures commission merchant that is reasonably likely to alter the risk profile of the futures commission merchant.

(2) The annual reviews of the Risk Management Program shall include an analysis of adherence to, and the effectiveness of, the risk management policies and procedures, and any recommendations for modifications to the Risk Management Program. The annual testing shall be performed by qualified internal audit staff that are independent of the business unit, or by a qualified third party audit service reporting to staff that are independent of the business unit. The results of the annual review of the Risk Management Program shall be promptly reported to and reviewed by the chief compliance officer, senior management, and governing body of the futures commission merchant.

(3) Each futures commission merchant shall document all internal and external reviews and testing of its Risk Management Program and written risk management policies and procedures including the date of the review or test; the results; any deficiencies identified; the corrective action taken; and the date that corrective action was taken. Such documentation shall be provided to Commission staff, upon request.

(g) *Distribution of risk management policies and procedures.* The Risk Management Program shall include procedures for the timely distribution of its written risk management policies and procedures to relevant supervisory personnel. Each futures commission merchant shall maintain records of the persons to whom the risk management policies and procedures were distributed and when they were distributed.

(h) *Recordkeeping.* (1) Each futures commission merchant shall maintain copies of all written approvals required by this section.

(2) All records or reports, including, but not limited to, the written policies and procedures and any changes thereto that a futures commission merchant is required to maintain pursuant to this regulation shall be maintained in accordance with § 1.31 and shall be made available promptly upon request to representatives of the Commission.

■ 5. Amend § 1.12 to:

■ a. Revise paragraphs (a)(1) and (a)(2); (b)(1), (b)(2), and (b)(4); (c); (d); (e); (f)(2) through (f)(4) and (f)(5)(i); (g); (h); and (i); and

■ b. Add paragraphs (j), (k), (l), (m), and (n).

The revisions and additions read as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

(a) * * *

(1) Give notice, as set forth in paragraph (n) of this section, that the applicant's or registrant's adjusted net capital is less than required by § 1.17 or by other capital rule, identifying the applicable capital rule. The notice must be given immediately after the applicant or registrant knows or should have known that its adjusted net capital is less than required by any of the aforesaid rules to which the applicant or registrant is subject; and

(2) Provide together with such notice documentation, in such form as necessary, to adequately reflect the applicant's or registrant's capital condition as of any date on which such person's adjusted net capital is less than the minimum required; *Provided, however,* that if the applicant or registrant cannot calculate or otherwise immediately determine its financial condition, it must provide the notice required by paragraph (a)(1) of this section and include in such notice a statement that the entity cannot presently calculate its financial condition. The applicant or registrant must provide similar documentation of its financial condition for other days as the Commission may request.

(b) * * *

(1) 150 percent of the minimum dollar amount required by § 1.17(a)(1)(i)(A);

(2) 110 percent of the amount required by § 1.17(a)(1)(i)(B);

* * * * *

(4) For securities brokers or dealers, the amount of net capital specified in Rule 17a-11(c) of the Securities and Exchange Commission (17 CFR 240.17a-11(c)), must file notice to that effect, as set forth in paragraph (n) of this section, as soon as possible and no later than twenty-four (24) hours of such event.

(c) If an applicant or registrant at any time fails to make or keep current the books and records required by these regulations, such applicant or registrant must, on the same day such event occurs, provide notice of such fact as specified in paragraph (n) of this section, specifying the books and records which have not been made or which are not current, and as soon as possible, but not later than forty-eight (48) hours after giving such notice, file a report as required by paragraph (n) of this section stating what steps have been and are being taken to correct the situation.

(d) Whenever any applicant or registrant discovers or is notified by an independent public accountant, pursuant to § 1.16(e)(2), of the existence of any material inadequacy, as specified in § 1.16(d)(2), such applicant or registrant must give notice of such material inadequacy, as provided in paragraph (n) of this section, as soon as possible but not later than twenty-four (24) hours of discovering or being notified of the material inadequacy. The applicant or registrant must file, in the manner provided for under paragraph (n) of this section, a report stating what steps have been and are being taken to correct the material inadequacy within forty-eight (48) hours of filing its notice of the material inadequacy.

(e) Whenever any self-regulatory organization learns that a member registrant has failed to file a notice or report as required by this section, that self-regulatory organization must immediately report this failure by notice, as provided in paragraph (n) of this section.

(f) * * *

(2) Whenever a registered futures commission merchant determines that any position it carries for another registered futures commission merchant or for a registered leverage transaction merchant must be liquidated immediately, transferred immediately or that the trading of any account of such futures commission merchant or leverage transaction merchant shall be only for purposes of liquidation, because the other futures commission merchant or the leverage transaction merchant has failed to meet a call for margin or to make other required deposits, the carrying futures commission merchant must immediately give notice, as provided in paragraph (n) of this section, of such a determination.

(3) Whenever a registered futures commission merchant determines that an account which it is carrying is undermargined by an amount which exceeds the futures commission merchant's adjusted net capital determined in accordance with § 1.17, the futures commission merchant must immediately provide notice, as provided in paragraph (n) of this section, of such a determination to the designated self-regulatory organization and the Commission. This paragraph (f)(3) shall apply to any account carried by the futures commission merchant, whether a customer, noncustomer, omnibus or proprietary account. For purposes of this paragraph, if any person has an interest of 10 percent or more in ownership or equity in, or guarantees, more than one account, or has guaranteed an account in addition to its own account, all such accounts shall be combined.

(4) A futures commission merchant shall provide immediate notice, as provided in paragraph (n) of this section, whenever any commodity interest account it carries is subject to a margin call, or call for other deposits required by the futures commission merchant, that exceeds the futures commission merchant's excess adjusted net capital, determined in accordance with § 1.17, and such call has not been answered by the close of business on the day following the issuance of the call. This applies to all accounts carried by the futures commission merchant, whether customer, noncustomer, or omnibus, that are subject to margining, including commodity futures, cleared swaps, and options. In addition to actual margin deposits by an account owner, a futures commission merchant may also take account of favorable market moves in determining whether

the margin call is required to be reported under this paragraph.

(5)(i) A futures commission merchant shall provide immediate notice, as provided in paragraph (n) of this section, whenever its excess adjusted net capital is less than six percent of the maintenance margin required by the futures commission merchant on all positions held in accounts of a noncustomer other than a noncustomer who is subject to the minimum financial requirements of:

(A) A futures commission merchant, or

(B) The Securities and Exchange Commission for a securities broker or dealer.

* * * * *

(g) A futures commission merchant shall provide notice, as provided in paragraph (n) of this section, of a substantial reduction in capital as compared to that last reported in a financial report filed with the Commission pursuant to § 1.10. This notice shall be provided as follows:

(1) If any event or series of events, including any withdrawal, advance, loan or loss cause, on a net basis, a reduction in net capital (or, if the futures commission merchant is qualified to use the filing option available under § 1.10(h), tentative net capital as defined in the rules of the Securities and Exchange Commission) of 20 percent or more, notice must be provided as provided in paragraph (n) of this section within two business days of the event or series of events causing the reduction stating the reason for the reduction and steps the futures commission merchant will be taking to ensure an appropriate level of net capital is maintained by the futures commission merchant; and

(2) If equity capital of the futures commission merchant or a subsidiary or affiliate of the futures commission merchant consolidated pursuant to § 1.17(f) (or 17 CFR 240.15c3–1e) would be withdrawn by action of a stockholder or a partner or a limited liability company member or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, or an unsecured advance or loan would be made to a stockholder, partner, sole proprietor, limited liability company member, employee or affiliate, such that the withdrawal, advance or loan would cause, on a net basis, a reduction in excess adjusted net capital (or, if the futures commission merchant is qualified to use the filing option available under § 1.10(h), excess net capital as defined in the rules of the Securities and Exchange Commission) of 30 percent or more, notice must be provided as provided in paragraph (n) of this section at least two business days prior to the withdrawal, advance or loan that would cause the reduction: *Provided, however,* That the provisions of paragraphs (g)(1) and (g)(2) of this section do not apply to any futures or securities transaction in the ordinary course of business between a futures commission merchant and any affiliate where the futures commission merchant makes payment to or on behalf of such affiliate for such transaction and then receives payment from such affiliate for such transaction within two business days from the date of the transaction.

(3) Upon receipt of such notice from a futures commission merchant, or upon a reasonable belief that a substantial reduction in capital has occurred or will occur, the Director of the Division of Swap Dealer and Intermediary Oversight or the Director's designee may require that the futures commission merchant provide or cause a Material Affiliated Person (as that term is defined in § 1.14(a)(2)) to provide, within three business days from the date of request or such shorter period as the Division Director or designee may specify, such other information as the Division Director or designee determines to be necessary based upon market conditions, reports provided by the futures commission merchant, or other available information.

(h) Whenever a person registered as a futures commission merchant knows or should know that the total amount of its funds on deposit in segregated accounts on behalf of customers trading on designated contract markets, or the amount of funds on deposit in segregated accounts for customers transacting in Cleared Swaps under part 22 of this chapter, or the total amount set aside on behalf of customers trading on non-United States markets under part 30 of this chapter, is less than the total amount of such funds required by the Act and the regulations to be on deposit in segregated or secured amount accounts on behalf of such customers, the registrant must report such deficiency immediately by notice to the registrant's designated self-regulatory organization and the Commission, as provided in paragraph (n) of this section.

(i) A futures commission merchant must provide immediate notice, as set forth in paragraph (n) of this section, whenever it discovers or is informed that it has invested funds held for futures customers trading on designated contract markets pursuant to § 1.20, Cleared Swaps Customer Collateral, as defined in § 22.1 of this chapter, or 30.7 customer funds, as defined in § 30.1 of this chapter, in instruments that are not permitted investments under § 1.25, or has otherwise violated the requirements governing the investment of funds belonging to customers under § 1.25.

(j) A futures commission merchant must provide immediate notice, as provided in paragraph (n) of this section, whenever the futures commission merchant does not hold a sufficient amount of funds in segregated accounts for futures customers under § 1.20, in segregated accounts for Cleared Swaps Customers under part 22 of this chapter, or in secured amount accounts for customers trading on foreign markets under part 30 of this chapter to meet the futures commission merchant's targeted residual interest in the segregated or secured amount accounts pursuant to its policies and procedures required under § 1.11, or whenever the futures commission merchant's amount of residual interest is less than the sum of the undermargined amounts in its customer accounts as determined at the point in time that the firm is required to maintain the undermargined amounts under § 1.22, and §§ 22.2 and 30.7 of this chapter.

(k) A futures commission merchant must provide immediate notice, as provided in paragraph (n) of this section, whenever the futures commission merchant, or the futures commission merchant's parent or material affiliate, experiences a material adverse impact to its creditworthiness or ability to fund its obligations, including any change that could adversely impact the firm's liquidity resources.

(l) A futures commission merchant must provide prompt notice, but in no event later than 24 hours, as provided in paragraph (n) of this section, whenever the futures commission merchant experiences a material change in its operations or risk profile, including a change in the senior management of the futures commission merchant, the establishment or termination of a line of business, or a material adverse change in the futures commission merchant's clearing arrangements.

(m) A futures commission merchant must provide notice, if the futures commission merchant has been notified by the Securities and Exchange Commission, a securities self-regulatory organization, or a futures self-regulatory organization, that it is the subject of a formal investigation. A futures commission merchant must provide a copy of any examination report issued to the futures commission merchant by the Securities and Exchange Commission or a securities self-regulatory organization. A futures commission merchant must provide the Commission with notice of any correspondence received from the Securities and Exchange Commission or a securities self-regulatory organization that raises issues with the adequacy of the futures commission merchant's capital position, liquidity to meet its obligations or otherwise operate its business, or internal controls. The notices and examination reports required by this section must be filed in a prompt manner, but in no event later than 24 hours of the reportable event, and must be filed in accordance with paragraph (n) of the section; *Provided, however,* that a futures commission merchant is not required to file a notice or copy of an examination report with the Securities and Exchange Commission, a securities self-regulatory organization, or a futures self-regulatory organization if such entity originally provided the communication or report to the futures commission merchant.

(n) *Notice.* (1) Every notice and report required to be filed by this section by a futures commission merchant or a self-regulatory organization must be filed with the Commission, with the designated self-regulatory organization, if any, and with the Securities and Exchange Commission, if such registrant is a securities broker or dealer. Every notice and report required to be filed by this section by an applicant for registration as a futures commission merchant must be filed with the National Futures Association (on behalf of the Commission), with the designated self-regulatory organization, if any, and with the Securities and Exchange Commission, if such applicant is a securities broker or dealer. Every notice or report that is required to be filed by this section by a futures commission merchant or a self-regulatory organization must include a discussion of how the reporting event originated and what steps have been, or are being taken, to address the reporting event.

(2) Every notice and report which an introducing broker or applicant for registration as an introducing broker is required to file by paragraphs (a), (c), and (d) of this section must be filed with the National Futures Association (on behalf of the Commission), with the designated self-regulatory organization, if any, and with every futures commission merchant carrying or intending to carry customer accounts for the introducing broker or applicant for registration as an introducing broker. Any notice or report filed with the National Futures Association pursuant to this paragraph shall be deemed for all purposes to be filed with, and to be the official record of, the Commission. Every notice or report that is required to be filed by this section by an introducing broker or applicant for registration as an introducing broker must include a discussion of how the reporting event originated and what steps have been, or are being taken, to address the reporting event.

(3) Every notice or report that is required to be filed by a futures commission merchant with the Commission or with a designated self-regulatory organization under this section must be in writing and must be filed via electronic transmission using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission; *Provided, however,* that if the registered futures commission merchant cannot file the notice or report using the electronic transmission approved by the Commission due to a transmission or systems failure, the futures commission merchant must immediately contact the Commission's regional office with jurisdiction over the futures commission merchant as provided in § 140.02 of this chapter, and by email to *FCMNotice@CFTC.gov.* Any such electronic submission must clearly indicate the futures commission merchant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer.

■ 6. Amend § 1.15 to revise paragraph (a)(4) to read as follows:

§ 1.15 Risk assessment reporting requirements for futures commission merchants.

(a) * * *

(4) The reports required to be filed pursuant to paragraphs (a)(1) and (2) of this section must be filed via electronic transmission using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission. Any such electronic submission must clearly indicate the registrant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer.

* * * * *

■ 7. Amend § 1.16 to:

■ a. Revise paragraphs (a)(4), (b)(1), (c)(1) and (c)(2), and (f)(1)(i)(C); and

■ b. Add paragraph (b)(4).

The revisions and addition read as follows:

§ 1.16 Qualifications and reports of accountants.

(a) * * *

(4) *Customer.* The term ''customer'' means customer, as defined in § 1.3, and 30.7 customer, as defined in § 30.1 of this chapter.

(b) *Qualifications of accountants.* (1) The Commission will recognize any person as a certified public accountant who is duly registered and in good standing as such under the laws of the place of his residence or principal office; *Provided, however,* that a certified public accountant engaged to conduct an examination of a futures commission merchant must be registered with the Public Company Accounting Oversight Board and must have undergone an examination by the Public Company Accounting Oversight Board, and may not be subject to a permanent or temporary bar to engage in the examination of public issuers or brokers or dealers registered with the Securities and Exchange Commission as a result of a Public Company Accounting Oversight Board disciplinary hearing.

* * * * *

(4) The governing body of each futures commission merchant must ensure that the certified public accountant engaged is duly qualified to perform an audit of the futures commission merchant. Such an evaluation of the qualifications of the certified public accountant should include, among other issues, the certified public accountant's experience in auditing futures commission merchants, the depth of the certified public accountant's staff, the certified public accountant's knowledge of the Act and Regulations, the size and geographic location of the futures commission merchant, and the independence of the certified public accountant. The governing body should also review and consider the inspection reports issued by the Public Company Accounting Oversight Board as part of the assessment of the qualifications of the public accountant to perform an audit of the futures commission merchant.

(c) * * *

(1) *Technical requirements.* The accountant's report must:

(i) Be dated;

(ii) Indicate the city and State where issued; and

(iii) Identify without detailed enumeration the financial statements covered by the report.

(2) *Representations as to the audit.* The accountant's report must state whether the audit was made in accordance with the auditing standards adopted by the Public Company Accounting Oversight Board, and must designate any auditing procedures deemed necessary by the accountant under the circumstances of the particular case which have been omitted and the reasons for their omission. However, nothing in this paragraph shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit made for the purposes of expressing the opinion required by paragraph (c)(3) of this section.

* * * * *

(f)(1) * * *

(i) * * *

(C) Any copy that under this paragraph is required to be filed with the Commission must be filed via electronic transmission using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission. Any such electronic submission must clearly indicate the registrant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer.

* * * * *

■ 8. Amend § 1.17 to revise paragraphs (a)(4), (b)(2), (b)(7), (c)(5)(v), (c)(5)(viii), and (c)(5)(ix) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

(a) * * *

(4) A futures commission merchant who is not in compliance with this section, or is unable to demonstrate such compliance as required by paragraph (a)(3) of this section, or who cannot certify to the Commission immediately upon request and demonstrate with verifiable evidence that it has sufficient access to liquidity to continue operating as a going concern, must transfer all customer accounts and immediately cease doing business as a futures commission merchant until such time as the firm is able to demonstrate such compliance; *Provided, however,* The registrant may trade for liquidation purposes only unless otherwise directed by the Commission and/or the designated self-regulatory organization; *And, Provided further,* That if such registrant immediately demonstrates to the satisfaction of the Commission or the designated self-regulatory organization the ability to achieve compliance, the Commission or the designated self-regulatory organization may in its discretion allow such registrant up to a maximum of 10 business days in which to achieve compliance without having to transfer accounts and cease doing business as required above. Nothing in this paragraph shall be construed as preventing the Commission or the designated self-regulatory organization from taking action against a registrant for non-compliance with any of the provisions of this section.

* * * * *

(b) * * *

(2) *Customer.* This term means a futures customer as defined in § 1.3, a cleared over the counter customer as defined in paragraph (b)(10) of this section, and a 30.7 customer as defined in § 30.1 of this chapter.

* * * * *

(7) *Customer account.* This term means an account in which commodity futures, options or cleared over the counter derivative positions are carried on the books of the applicant or registrant which is an account that is included in the definition of customer as defined in § 1.17(b)(2).

* * * * *

(c) * * *

(5) * * *

(v) In the case of securities and obligations used by the applicant or registrant in computing net capital, and in the case of a futures commission merchant that invests funds deposited by futures customers as defined in § 1.3, Cleared Swaps Customers as defined in § 22.1 of this chapter, and 30.7 customers as defined in § 30.1 of this chapter in securities as permitted investments under § 1.25, the deductions specified in Rule 240.15c3–1(c)(2)(vi) or Rule 240.15c3–1(c)(2)(vii) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vi) and 17 CFR 240.15c3–1(c)(2)(vii)) (''securities haircuts''). Futures commission merchants that establish and enforce written policies and procedures to assess the credit risk of commercial paper, convertible debt instruments, or nonconvertible debt instruments in accordance with Rule 240.15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vi)) may apply the lower haircut percentages specified in Rule 240.15c3–1(c)(2)(vi) for such commercial paper, convertible debt instruments and nonconvertible debt instruments. Futures commission merchants must maintain their written policies and procedures in accordance with § 1.31;

* * * * *

(viii) In the case of a futures commission merchant, for undermargined customer commodity futures accounts and commodity option customer accounts the amount of funds required in each such account to meet maintenance margin requirements of the applicable board of trade or if there are no such maintenance margin requirements, clearing organization margin requirements applicable to such positions, after application of calls for margin or other required deposits which are outstanding no more than one business day. If there are no such maintenance margin requirements or clearing organization margin requirements, then the amount of funds required to provide margin equal to the amount necessary, after application of calls for margin or other required deposits outstanding no more than one business day, to restore original margin when the original margin has been depleted by 50 percent or more: *Provided,* To the extent a deficit is excluded from current assets in accordance with paragraph (c)(2)(i) of this section such amount shall not also be deducted under this paragraph. In the event that an owner of a customer account has deposited an asset other than cash to margin, guarantee or secure his account, the value attributable to such asset for purposes of this subparagraph shall be the lesser of:

(A) The value attributable to the asset pursuant to the margin rules of the applicable board of trade, or

(B) The market value of the asset after application of the percentage deductions specified in paragraph (c)(5) of this section;

(ix) In the case of a futures commission merchant, for undermargined commodity futures and commodity option noncustomer and omnibus accounts the amount of funds required in each such account to meet maintenance margin requirements of the applicable board of trade or if there are no such maintenance margin requirements, clearing organization margin requirements applicable to such positions, after application of calls for margin or other required deposits which are outstanding no more than one business day. If there are no such maintenance margin requirements or clearing organization margin requirements, then the amount of funds required to provide margin equal to the amount necessary after application of calls for margin or other required deposits outstanding no more than one business day to restore original margin when the original margin has been depleted by 50 percent or more: *Provided,* To the extent a deficit is excluded from current assets in accordance with paragraph (c)(2)(i) of this section such amount shall not also be deducted under this paragraph. In the event that an owner of a noncustomer or omnibus account has deposited an asset other than cash to margin, guarantee or secure his account the value attributable to such asset for purposes of this paragraph shall be the lesser of the value attributable to such asset pursuant to the margin rules of the applicable board of trade, or the market value of such asset after application of the percentage deductions specified in paragraph (c)(5) of this section;

* * * * *

■ 9. Revise § 1.20 to read as follows:

§ 1.20 Futures customer funds to be segregated and separately accounted for.

(a) *General.* A futures commission merchant must separately account for all futures customer funds and segregate such funds as belonging to its futures customers. A futures commission merchant shall deposit futures customer funds under an account name that clearly identifies them as futures customer funds and shows that such funds are segregated as required by sections 4d(a) and 4d(b) of the Act and by this part. A futures commission merchant must at all times maintain in the separate account or accounts money, securities and property in an amount at least sufficient in the aggregate to cover its total obligations to all futures customers as computed under paragraph (i) of this section. The futures commission merchant must perform appropriate due diligence as required by § 1.11 on any and all locations of futures customer funds, as specified in paragraph (b) of this section, to ensure that the location in which the futures commission merchant has deposited such funds is a financially sound entity.

(b) *Location of futures customer funds.* A futures commission merchant may deposit futures customer funds, subject to the risk management policies and procedures of the futures commission merchant required by § 1.11, with the following depositories:

(1) A bank or trust company;

(2) A derivatives clearing organization; or

(3) Another futures commission merchant.

(c) *Limitation on the holding of futures customer funds outside of the United States.* A futures commission merchant may hold futures customer funds with a depository outside of the United States only in accordance with § 1.49.

(d) *Written acknowledgment from depositories.* (1) A futures commission merchant must obtain a written acknowledgment from each bank, trust company, derivatives clearing organization, or futures commission merchant prior to or contemporaneously with the opening of an account by the futures commission merchant with such depositories; *provided, however,* that a written acknowledgment need not be obtained from a derivatives clearing organization that has adopted and submitted to the Commission rules that provide for the segregation of futures customer funds in accordance with all relevant provisions of the Act and the rules and orders promulgated thereunder.

(2) The written acknowledgment must be in the form as set out in Appendix A to this part.

(3)(i) A futures commission merchant shall deposit futures customer funds only with a depository that agrees to provide the director of the Division of Swap Dealer and Intermediary Oversight, or any successor division, or such director's designees, with direct, read-only electronic access to transaction and account balance information for futures customer accounts.

(ii) The written acknowledgment must contain the futures commission merchant's authorization to the depository to provide direct, read-only electronic access to futures customer account transaction and account balance information to the director of the Division of Swap Dealer and Intermediary Oversight, or any successor division, or such director's designees, without further notice to or consent from the futures commission merchant.

(4) A futures commission merchant shall deposit futures customer funds only with a depository that agrees to provide the Commission and the futures commission merchant's designated self-regulatory organization with a copy of the executed written acknowledgment no later than three business days after the opening of the account or the execution of a new written acknowledgment for an existing account, as applicable. The Commission must receive the written acknowledgment from the depository via electronic means, in a format and manner determined by the Commission. The written acknowledgment must contain the futures commission merchant's authorization to the depository to provide the written acknowledgment to the Commission and to the futures commission merchant's designated self-regulatory organization without further notice to or consent from the futures commission merchant.

(5) A futures commission merchant shall deposit futures customer funds only with a depository that agrees that accounts containing customer funds may be examined at any reasonable time by the director of the Division of Swap Dealer and Intermediary Oversight or the director of the Division of Clearing and Risk, or any successor divisions, or such directors' designees, or an appropriate officer, agent or employee of the futures commission merchant's designated self-regulatory organization. The written acknowledgment must contain the futures commission merchant's authorization to the depository to permit any such examination to take place without further notice to or consent from the futures commission merchant.

(6) A futures commission merchant shall deposit futures customer funds only with a depository that agrees to reply promptly and directly to any request from the director of the Division of Swap Dealer and Intermediary Oversight or the director of the Division of Clearing and Risk, or any successor divisions, or such directors' designees, or an appropriate officer, agent or employee of the futures commission merchant's designated self-regulatory organization for confirmation of account balances or provision of any other information regarding or related to an account. The written acknowledgment must contain the futures commission merchant's authorization to the depository to reply promptly and directly as required by this paragraph without further notice to or consent from the futures commission merchant.

(7) The futures commission merchant shall promptly file a copy of the written acknowledgment with the Commission in the format and manner specified by the Commission no later than three business days after the opening of the account or the execution of a new written acknowledgment for an existing account, as applicable.

(8) A futures commission merchant shall obtain a new written acknowledgment within 120 days of any changes in the following:

(i) The name or business address of the futures commission merchant;

(ii) The name or business address of the bank, trust company, derivatives clearing organization or futures commission merchant receiving futures customer funds; or

(iii) The account number(s) under which futures customer funds are held.

(9) A futures commission merchant shall maintain each written acknowledgment readily accessible in its files in accordance with § 1.31, for as long as the account remains open, and thereafter for the period provided in § 1.31.

(e) *Commingling.* (1) A futures commission merchant may for convenience commingle the futures customer funds that it receives from, or on behalf of, multiple futures customers in a single account or multiple accounts with one or more of the depositories listed in paragraph (b) of this section.

(2) A futures commission merchant shall not commingle futures customer funds with the money, securities or property of such futures commission merchant, or with any proprietary account of such futures commission merchant, or use such funds to secure or guarantee the obligation of, or extend credit to, such futures commission merchant or any proprietary account of such futures commission merchant; *provided, however,* a futures commission merchant may deposit proprietary funds in segregated accounts as permitted under § 1.23.

(3) A futures commission merchant may not commingle futures customer funds with funds deposited by 30.7 customers as defined in § 30.1 of this chapter and set aside in separate accounts as required by part 30 of this chapter, or with funds deposited by Cleared Swaps Customers as defined in § 22.1 of this chapter and held in segregated accounts pursuant to section 4d(f) of the Act; *provided, however,* that a futures commission merchant may commingle futures customer funds with funds deposited by 30.7 customers or Cleared Swaps Customers if expressly permitted by a Commission regulation or order, or by a derivatives clearing organization rule approved in accordance with § 39.15(b)(2) of this chapter.

(f) *Limitation on use of futures customer funds.* (1) A futures commission merchant shall treat and deal with the funds of a futures customer as belonging to such futures customer. A futures commission merchant shall not use the funds of a futures customer to secure or guarantee the commodity interests, or to secure or extend the credit, of any person other than the futures customer for whom the funds are held.

(2) A futures commission merchant shall obligate futures customer funds to a derivatives clearing organization, a futures commission merchant, or any depository solely to purchase, margin, guarantee, secure, transfer, adjust or settle trades, contracts or commodity option transactions of futures customers; *provided, however,* that a futures commission merchant is permitted to use the funds belonging to a futures customer that are necessary in the normal course of business to pay lawfully accruing fees or expenses on behalf of the futures customer's positions including commissions, brokerage, interest, taxes, storage and other fees and charges.

(3) No person, including any derivatives clearing organization or any depository, that has received futures customer funds for deposit in a segregated account, as provided in this section, may hold, dispose of, or use any such funds as belonging to any person other than the futures customers of the futures commission merchant which deposited such funds.

(g) *Derivatives clearing organizations.* (1) *General.* All futures customer funds received by a derivatives clearing organization from a member to purchase, margin, guarantee, secure or settle the trades, contracts or commodity options of the clearing member's futures customers and all money accruing to such futures customers as the result of trades, contracts or commodity options so carried shall be separately accounted for and segregated as belonging to such futures customers, and a derivatives clearing organization shall not hold, use or dispose of such futures customer funds except as belonging to such futures customers. A derivatives clearing organization shall deposit futures customer funds under an account name that clearly identifies them as futures customer funds and shows that such funds are segregated as required by sections 4d(a) and 4d(b) of the Act and by this part.

(2) *Location of futures customer funds.* A derivatives clearing organization may deposit futures customer funds with a bank or trust company, which may include a Federal Reserve Bank with respect to deposits of a derivatives clearing organization that is designated by the Financial Stability Oversight Council to be systemically important.

(3) *Limitation on the holding of futures customer funds outside of the United States.* A derivatives clearing organization may hold futures customer funds with a depository outside of the United States only in accordance with § 1.49.

(4) *Written acknowledgment from depositories.* (i) A derivatives clearing organization must obtain a written acknowledgment from each depository prior to or contemporaneously with the opening of a futures customer funds account.

(ii) The written acknowledgment must be in the form as set out in Appendix B to this part; *provided, however,* that a derivatives clearing organization shall obtain from a Federal Reserve Bank only a written acknowledgment that:

(A) The Federal Reserve Bank was informed that the customer funds deposited therein are those of customers who trade commodities, options, swaps, and other products and are being held in accordance with the provisions of section 4d of the Act and Commission regulations thereunder; and

(B) The Federal Reserve Bank agrees to reply promptly and directly to any request from the director of the Division of Clearing and Risk or the director of the Division of Swap Dealer and Intermediary Oversight, or any successor divisions, or such directors' designees, for confirmation of account balances or provision of any other information regarding or related to an account.

(iii) A derivatives clearing organization shall deposit futures customer funds only with a depository that agrees to provide the Commission with a copy of the executed written acknowledgment no later than three business days after the opening of the account or the execution of a new written acknowledgment for an existing account, as applicable. The Commission must receive the written acknowledgment from the depository via electronic means, in a format and manner determined by the Commission. The written acknowledgment must contain the derivatives clearing organization's authorization to the depository to provide the written acknowledgment to the Commission without further notice to or consent from the derivatives clearing organization.

(iv) A derivatives clearing organization shall deposit futures customer funds only with a depository that agrees to reply promptly and directly to any request from the director of the Division of Clearing and Risk or the director of the Division of Swap Dealer and Intermediary Oversight, or any successor divisions, or such directors' designees, for confirmation of account balances or provision of any other information regarding or related to an account. The written acknowledgment must contain the derivatives clearing organization's authorization to the depository to reply promptly and directly as required by this paragraph without further notice to or consent from the derivatives clearing organization.

(v) A derivatives clearing organization shall promptly file a copy of the written acknowledgment with the Commission in the format and manner specified by the Commission no later than three business days after the opening of the account or the execution of a new written acknowledgment for an existing account, as applicable.

(vi) A derivatives clearing organization shall obtain a new written acknowledgment within 120 days of any changes in the following:

(A) The name or business address of the derivatives clearing organization;

(B) The name or business address of the depository receiving futures customer funds; or

(C) The account number(s) under which futures customer funds are held.

(vii) A derivatives clearing organization shall maintain each written acknowledgment readily accessible in its files in accordance with § 1.31, for as long as the account remains open, and thereafter for the period provided in § 1.31.

(5) *Commingling.* (i) A derivatives clearing organization may for convenience commingle the futures customer funds that it receives from, or on behalf of, multiple futures commission merchants in a single account or multiple accounts with one or more of the depositories listed in paragraph (g)(2) of this section.

(ii) A derivatives clearing organization shall not commingle futures customer funds with the money, securities or property of such derivatives clearing organization or with any proprietary account of any of its clearing members, or use such funds to secure or guarantee the obligations of, or extend credit to, such derivatives clearing organization or any proprietary account of any of its clearing members.

(iii) A derivatives clearing organization may not commingle funds held for futures customers with funds deposited by clearing members on behalf of their 30.7 customers as defined in § 30.1 of this chapter and set aside in separate accounts as required by part 30 of this chapter, or with funds deposited by clearing members on behalf of their Cleared Swaps Customers as defined in § 22.1 of this chapter and held in segregated accounts pursuant section 4d(f) of the Act; *provided, however,* that a derivatives clearing organization may commingle futures customer funds with funds deposited by clearing members on behalf of their 30.7 customers or Cleared Swaps Customers if expressly permitted by a Commission regulation or order, or by a derivatives clearing organization rule approved in accordance with § 39.15(b)(2) of this chapter.

(h) *Immediate availability of bank and trust company deposits.* All futures customer funds deposited by a futures commission merchant or a derivatives clearing organization with a bank or trust company must be immediately available for withdrawal upon the demand of the futures commission merchant or derivatives clearing organization.

(i) *Requirements as to amount.* (1) For purposes of this paragraph (i), the term ''account'' shall mean the entries on the books and records of a futures commission merchant pertaining to the futures customer funds of a particular futures customer.

(2) The futures commission merchant must reflect in the account that it maintains for each futures customer the net liquidating equity for each such customer, calculated as follows: The market value of any futures customer funds that it receives from such customer, as adjusted by:

(i) Any uses permitted under paragraph (f) of this section;

(ii) Any accruals on permitted investments of such collateral under § 1.25 that, pursuant to the futures commission merchant's customer agreement with that customer, are creditable to such customer;

(iii) Any gains and losses with respect to contracts for the purchase or sale of a commodity for future delivery and any options on such contracts;

(iv) Any charges lawfully accruing to the futures customer, including any commission, brokerage fee, interest, tax, or storage fee; and

(v) Any appropriately authorized distribution or transfer of such collateral.

(3) If the market value of futures customer funds in the account of a futures customer is positive after adjustments, then that account has a credit balance. If the market value of futures customer funds in the account of a futures customer is negative after adjustments, then that account has a debit balance.

(4) The futures commission merchant must maintain in segregation an amount equal to the sum of any credit balances that the futures customers of the futures commission merchant have in their accounts. This balance may not be reduced by any debit balances that the futures customers of the futures commission merchants have in their accounts.

Appendix A to § 1.20—Futures Commission Merchant Acknowledgment Letter for CFTC Regulation 1.20 Customer Segregated Account

[Date]

[Name and Address of Bank, Trust Company, Derivatives Clearing Organization or Futures Commission Merchant]

We refer to the Segregated Account(s) which [Name of Futures Commission Merchant] (''we'' or ''our'') have opened or will open with [Name of Bank, Trust Company, Derivatives Clearing Organization or Futures Commission Merchant] (''you'' or ''your'') entitled:

[Name of Futures Commission Merchant] [if applicable, add ''FCM Customer Omnibus Account''] CFTC Regulation 1.20 Customer Segregated Account under Sections 4d(a) and 4d(b) of the Commodity Exchange Act [and, if applicable, '', Abbreviated as [short title reflected in the depository's electronic system]'']

Account Number(s): [ ]

(collectively, the ''Account(s)'').

You acknowledge that we have opened or will open the above-referenced Account(s) for the purpose of depositing, as applicable, money, securities and other property (collectively the ''Funds'') of customers who trade commodities, options, swaps, and other products, as required by Commodity Futures Trading Commission (''CFTC'') Regulations, including Regulation 1.20, as amended; that the Funds held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the ''Act''), and Part 1 of the CFTC's regulations, as amended; and that the Funds must otherwise be treated in accordance with the provisions of Section 4d of the Act and CFTC regulations thereunder.

Furthermore, you acknowledge and agree that such Funds may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Funds in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you. This prohibition does not affect your right to recover funds advanced in the form of cash transfers, lines of credit, repurchase agreements or other similar liquidity arrangements you make in lieu of liquidating non-cash assets held in the Account(s) or in lieu of converting cash held in the Account(s) to cash in a different currency.

In addition, you agree that the Account(s) may be examined at any reasonable time by the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent or employee of our designated self-regulatory organization (''DSRO''), [Name of DSRO], and this letter constitutes the authorization and direction of the undersigned on our behalf to permit any such examination to take place without further notice to or consent from us.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the Account(s) from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

You further acknowledge and agree that, pursuant to authorization granted by us to you previously or herein, you have provided, or will promptly provide following the opening of the Account(s), the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor division, or such director's designees, with technological connectivity, which may include provision of hardware, software, and related technology and protocol support, to facilitate direct, read-only electronic access to transaction and account balance information for the Account(s). This letter constitutes the authorization and direction of the undersigned on our behalf for you to establish this connectivity and access if not previously established, without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information and access requests will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information or access request, in order to provide for the secure transmission and delivery of the requested information or access to the appropriate recipient(s). We will not hold you responsible for acting pursuant to any information or access request from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event that we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Funds held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Funds maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason, and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns and, for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) and to [Name of DSRO], acting in its capacity as our DSRO. We hereby authorize and direct you to provide such copies without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Futures Commission Merchant]

By:

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

[Name of Bank, Trust Company, Derivatives Clearing Organization or Futures Commission Merchant]

By:

Print Name:

Title:

Contact Information: [Insert phone number and email address]

DATE:

Appendix B to § 1.20—Derivatives Clearing Organization Acknowledgment Letter for CFTC Regulation 1.20 Customer Segregated Account

[Date]

[Name and Address of Bank or Trust Company]

We refer to the Segregated Account(s) which [Name of Derivatives Clearing Organization] (''we'' or ''our'') have opened or will open with [Name of Bank or Trust Company] (''you'' or ''your'') entitled:

[Name of Derivatives Clearing Organization] Futures Customer Omnibus Account, CFTC Regulation 1.20 Customer Segregated Account under Sections 4d(a) and 4d(b) of the Commodity Exchange Act [and, if applicable, '', Abbreviated as [short title reflected in the depository's electronic system]'']

Account Number(s): [ ]

(collectively, the ''Account(s)'').

You acknowledge that we have opened or will open the above-referenced Account(s) for the purpose of depositing, as applicable, money, securities and other property (collectively the ''Funds'') of customers who trade commodities, options, swaps, and other products, as required by Commodity Futures Trading Commission (''CFTC'') Regulations, including Regulation 1.20, as amended; that the Funds held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the ''Act''), and Part 1 of the CFTC's regulations, as amended; and that the Funds must otherwise be treated in accordance with the provisions of Section 4d of the Act and CFTC regulations thereunder.

Furthermore, you acknowledge and agree that such Funds may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Funds in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you. This prohibition does not affect your right to recover funds advanced in the form of cash transfers, lines of credit, repurchase agreements or other similar liquidity arrangements you make in lieu of liquidating non-cash assets held in the Account(s) or in lieu of converting cash held in the Account(s) to cash in a different currency.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the Account(s) from the director of the Division of Clearing and Risk of the CFTC or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information requests will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s). We will not hold you responsible for acting pursuant to any information request from the director of the Division of Clearing and Risk of the CFTC or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event that we or any of our futures commission merchant clearing members become(s) subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Funds held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Funds maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason, and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns and, for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC). We hereby authorize and direct you to provide such copy without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Derivatives Clearing Organization]
By:
Print Name:
Title:
ACKNOWLEDGED AND AGREED:
[Name of Bank or Trust Company]
By:
Print Name:
Title:
Contact Information: [Insert phone number and email address]
DATE:

■ 10. Revise § 1.22 to read as follows:

§ 1.22 Use of futures customer funds restricted.

(a) No futures commission merchant shall use, or permit the use of, the futures customer funds of one futures customer to purchase, margin, or settle the trades, contracts, or commodity options of, or to secure or extend the credit of, any person other than such futures customer.

(b) Futures customer funds shall not be used to carry trades or positions of the same futures customer other than in contracts for the purchase of sale of any commodity for future delivery or for options thereon traded through the facilities of a designated contract market.

(c)(1) The undermargined amount for a futures customer's account is the amount, if any, by which:

(i) The total amount of collateral required for that futures customer's positions in that account, at the time or times referred to in paragraph (c)(2) of this section, exceeds

(ii) The value of the futures customer funds for that account, as calculated in § 1.20(i)(2).

(2) Each futures commission merchant must compute, based on the information available to the futures commission merchant as of the close of each business day,

(i) The undermargined amounts, based on the clearing initial margin that will be required to be maintained by that futures commission merchant for its futures customers, at each derivatives clearing organization of which the futures commission merchant is a member, at the point of the daily settlement (as described in § 39.14 of this chapter) that will complete during the following business day for each such derivatives clearing organization less

(ii) Any debit balances referred to in § 1.20(i)(4) included in such undermargined amounts.

(3)(i) Prior to the Residual Interest Deadline, such futures commission merchant must maintain residual interest in segregated funds that is at least equal to the computation set forth in paragraph (c)(2) of this section. Where a futures commission merchant is subject to multiple Residual Interest

Deadlines, prior to each Residual Interest Deadline, such futures commission merchant must maintain residual interest in segregated funds that is at least equal to the portion of the computation set forth in paragraph (c)(2) of this section attributable to the clearing initial margin required by the derivatives clearing organization making such settlement.

(ii) A futures commission merchant may reduce the amount of residual interest required in paragraph (c)(3)(i) of this section to account for payments received from or on behalf of undermargined futures customers (less the sum of any disbursements made to or on behalf of such customers) between the close of the previous business day and the Residual Interest Deadline.

(4) For purposes of paragraph (c)(2) of this section, a futures commission merchant should include, as clearing initial margin, customer initial margin that the futures commission merchant will be required to maintain, for that futures commission merchant's futures customers, at another futures commission merchant.

(5) *Residual Interest Deadline defined.* (i) Except as provided in paragraph (c)(5)(ii) of this section, the Residual Interest Deadline shall be the time of the settlement referenced in paragraph (c)(2)(i) or, as appropriate, (c)(4), of this section.

(ii) Starting on November 14, 2014 and during the phase-in period described in paragraph (c)(5)(iii) of this section, the Residual Interest Deadline shall be 6:00 p.m. Eastern Time on the date of the settlement referenced in paragraph (c)(2)(i) or, as appropriate, (c)(4), of this section.

(iii)(A) No later than May 16, 2016, the staff of the Commission shall complete and publish for public comment a report addressing, to the extent information is practically available, the practicability (for both futures commission merchants and customers) of moving that deadline from 6:00 p.m. Eastern Time on the date of the settlement referenced in paragraph (c)(2)(i) or, as appropriate, (c)(4), of this section to the time of that settlement (or to some other time of day), including whether and on what schedule it would be feasible to do so, and the costs and benefits of such potential requirements. Staff shall, using the Commission's Web site, solicit public comment and shall conduct a public roundtable regarding specific issues to be covered by such report.

(B) Nine months after publication of the report required by paragraph (c)(5)(iii)(A) of this section, the Commission may (but shall not be required to) do either or both of the following:

(*1*) Terminate the phase-in period, in which case the phase-in period shall end as of a date established by order published in the **Federal Register,** which date shall be no less than one year after the date such order is published; or

(*2*) Determine that it is necessary or appropriate in the public interest to propose through rulemaking a different Residual Interest Deadline. In that event, the Commission shall establish, by order published in the **Federal Register,** a phase-in schedule.

(C) If the phase-in schedule has not been amended pursuant to paragraph (c)(5)(iii)(B) of this section, then the phase-in period shall end on December 31, 2018.

■ 11. Revise § 1.23 to read as follows:

§ 1.23 Interest of futures commission merchant in segregated futures customer funds; additions and withdrawals.

(a)(1) The provision in sections 4d(a)(2) and 4d(b) of the Act and the provision in § 1.20 that prohibit the commingling of futures customer funds with the funds of a futures commission merchant, shall not be construed to prevent a futures commission merchant from having a residual financial interest in the futures customer funds segregated as required by the Act and the regulations in this part and set apart for the benefit of futures customers; nor shall such provisions be construed to prevent a futures commission merchant from adding to such segregated futures customer funds such amount or amounts of money, from its own funds or unencumbered securities from its own inventory, of the type set forth in § 1.25 of this part, as it may deem necessary to ensure any and all futures customers' accounts from becoming undersegregated at any time.

(2) If a futures commission merchant discovers at any time that it is holding insufficient funds in segregated accounts to meet its obligations under §§ 1.20 and 1.22, the futures commission merchant shall immediately deposit sufficient funds into segregation to bring the account into compliance.

(b) A futures commission merchant may not withdraw funds, except withdrawals that are made to or for the benefit of futures customers, from an account or accounts holding futures customer funds unless the futures commission merchant has prepared the daily segregation calculation required by § 1.32 as of the close of business on the previous business day. A futures commission merchant that has completed its daily segregation calculation may make withdrawals, in addition to withdrawals that are made to or for the benefit of futures customers, to the extent of its actual residual financial interest in funds held in segregated futures accounts, adjusted to reflect market activity and other events that may have decreased the amount of the firm's residual financial interest since the close of business on the previous business day, including the withdrawal of securities held in segregated safekeeping accounts held by a bank, trust company, derivatives clearing organization or other futures commission merchant. Such withdrawal(s), *however,* shall not result in the funds of one futures customer being used to purchase, margin or carry the trades, contracts or commodity options, or extend the credit of any other futures customer or other person.

(c) Notwithstanding paragraphs (a) and (b) of this section, each futures commission merchant shall establish a targeted residual interest (*i.e.,* excess funds) that is in an amount that, when maintained as its residual interest in the segregated funds accounts, reasonably ensures that the futures commission merchant shall remain in compliance with the segregated funds requirements at all times. Each futures commission merchant shall establish policies and procedures designed to reasonably ensure that the futures commission merchant maintains the targeted residual amounts in segregated funds at all times. The futures commission merchant shall maintain sufficient capital and liquidity, and take such other appropriate steps as are necessary, to reasonably ensure that such amount of targeted residual interest is maintained as the futures commission merchant's residual interest in the segregated funds accounts at all times. In determining the amount of the targeted residual interest, the futures commission merchant shall analyze all relevant factors affecting the amounts in segregated funds from time to time, including without limitation various factors, as applicable, relating to the nature of the futures commission merchant's business including, but not limited to, the composition of the futures commission merchant's customer base, the general creditworthiness of the customer base, the general trading activity of the customers, the types of markets and products traded by the customers, the proprietary trading of the futures commission merchant, the general volatility and liquidity of the markets and products traded by customers, the futures commission merchant's own liquidity and capital needs, and the historical trends in customer segregated fund balances and debit balances in customers' and undermargined accounts. The analysis and calculation of the targeted amount of the future commission merchant's residual interest must be described in writing with the specificity necessary to allow the Commission and the futures commission merchant's designated self-regulatory organization to duplicate the analysis and calculation and test the assumptions made by the futures commission merchant. The adequacy of the targeted residual interest and the process for establishing the targeted residual interest must be reassessed periodically by the futures commission merchant and revised as necessary.

(d) Notwithstanding any other paragraph of this section, a futures commission merchant may not withdraw funds, in a single transaction or a series of transactions, that are not made to or for the benefit of futures customers from futures accounts if such withdrawal(s) would exceed 25 percent of the futures commission merchant's residual interest in such accounts as reported on the daily segregation calculation required by § 1.32 and computed as of the close of business on the previous business day, unless:

(1) The futures commission merchant's chief executive officer, chief finance officer or other senior official that is listed as a principal of the futures commission merchant on its Form 7–R and is knowledgeable about the futures commission merchant's financial requirements and financial position pre-approves in writing the withdrawal, or series of withdrawals;

(2) The futures commission merchant files written notice of the withdrawal or series of withdrawals, with the Commission and with its designated self-regulatory organization immediately after the chief executive officer, chief finance officer or other senior official as described in paragraph (c)(1) of this section pre-approves the withdrawal or series of withdrawals. The written notice must:

(i) Be signed by the chief executive officer, chief finance officer or other senior official as described in paragraph (c)(1) of this section that pre-approved the withdrawal, and give notice that the futures commission merchant has withdrawn or intends to withdraw more than 25 percent of its residual interest in segregated accounts holding futures customer funds;

(ii) Include a description of the reasons for the withdrawal or series of withdrawals;

(iii) List the amount of funds provided to each recipient and each recipient's name;

(iv) Include the current estimate of the amount of the futures commission merchant's residual interest in the futures accounts after the withdrawal;

(v) Contain a representation by the chief executive officer, chief finance officer or other senior official as described in paragraph (c)(1) of this section that pre-approved the withdrawal, or series of withdrawals, that, after due diligence, to such person's knowledge and reasonable belief, the futures commission merchant remains in compliance with the segregation requirements after the withdrawal. The chief executive officer, chief finance officer or other senior official as described in paragraph (c)(1) of this section must consider the daily segregation calculation as of the close of business on the previous business day and any other factors that may cause a material change in the futures commission merchant's residual interest since the close of business the previous business day, including known unsecured futures customer debits or deficits, current day market activity and any other withdrawals made from the futures accounts; and

(vi) Any such written notice filed with the Commission must be filed via electronic transmission using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instruction issued by or approved by the Commission. Any such electronic submission must clearly indicate the registrant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer. Any written notice filed must be followed up with direct communication to the Regional office of the Commission that has supervisory authority over the futures commission merchant whereby the Commission acknowledges receipt of the notice; and

(3) After making a withdrawal requiring the approval and notice required in paragraphs (c)(1) and (2) of this section, and before the completion of its next daily segregated funds calculation, no futures commission merchant may make any further withdrawals from accounts holding futures customer funds, except to or for the benefit of futures customers, without, for each withdrawal, obtaining the approval required under paragraph (c)(1) of this section and filing a written notice in the manner specified under paragraph (c)(2) of this section with the Commission and its designated self-regulatory organization signed by the chief executive officer, chief finance officer, or other senior official. The written notice must:

(i) List the amount of funds provided to each recipient and each recipient's name;

(ii) Disclose the reason for each withdrawal;

(iii) Confirm that the chief executive officer, chief finance officer, or other senior official (and identify of the person if different from the person who signed the notice) pre-approved the withdrawal in writing;

(iv) Disclose the current estimate of the futures commission merchant's remaining total residual interest in the segregated accounts holding futures customer funds after the withdrawal; and

(v) Include a representation that, after due diligence, to the best of the notice signatory's knowledge and reasonable belief the futures commission merchant remains in compliance with the segregation requirements after the withdrawal.

(e) If a futures commission merchant withdraws funds from futures accounts that are not made to or for the benefit of futures customers, and the withdrawal causes the futures commission merchant to not hold sufficient funds in the futures accounts to meet its targeted residual interest, as required to be computed under § 1.11, the futures commission merchant should deposit its own funds into the futures accounts to restore the account balance to the targeted residual interest amount by the close of business on the next business day, or, if appropriate, revise the futures commission merchant's targeted amount of residual interest pursuant to the policies and procedures required by § 1.11. Notwithstanding the foregoing, if a the futures commission merchant's residual interest in customer accounts is less than the amount required by § 1.22 at any particular point in time, the futures commission merchant must immediately restore the residual interest to exceed the sum of such amounts. Any proprietary funds deposited in the futures accounts must be unencumbered and otherwise compliant with § 1.25, as applicable.

■ 12. Amend § 1.25 to:
■ a. Remove paragraph (b)(6); and
■ b. Revise paragraphs (b)(3)(v), (c)(3), (d)(7), (d)(11), and (e).

The revisions read as follows:

§ 1.25 Investment of customer funds.

* * * * *

(b) * * *

(3) * * *

(v) *Counterparty concentration limits.* Securities purchased by a futures commission merchant or derivatives clearing organization from a single counterparty, or from one or more counterparties under common ownership or control, subject to an agreement to resell the securities to the counterparty or counterparties, shall not exceed 25 percent of total assets held in segregation or under § 30.7 of this chapter by the futures commission merchant or derivatives clearing organization.

* * * * *

(c) * * *

(3) A futures commission merchant or derivatives clearing organization shall maintain the confirmation relating to the purchase in its records in accordance with § 1.31 and note the ownership of fund shares (by book-entry or otherwise) in a custody account of the futures commission merchant or derivatives clearing organization in accordance with § 1.26. The futures commission merchant or the derivatives clearing organization shall obtain the acknowledgment letter required by § 1.26 from an entity that has substantial control over the fund shares purchased with customer funds and has the knowledge and authority to facilitate redemption and payment or transfer of the customer funds. Such entity may include the fund sponsor or depository acting as custodian for fund shares.

* * * * *

(d) * * *

(7) Securities transferred to the futures commission merchant or derivatives clearing organization under the agreement are held in a safekeeping account with a bank as referred to in paragraph (d)(2) of this section, a Federal Reserve Bank, a derivatives clearing organization, or the Depository Trust Company in an account that complies with the requirements of § 1.26.

* * * * *

(11) The transactions effecting the agreement are recorded in the record required to be maintained under § 1.27 of investments of customer funds, and the securities subject to such transactions are specifically identified in such record as described in paragraph (d)(1) of this section and further identified in such record as being subject to repurchase and reverse repurchase agreements.

* * * * *

(e) *Deposit of firm-owned securities into segregation.* A futures commission merchant may deposit unencumbered securities of the type specified in this section, which it owns for its own account, into a customer account. A futures commission merchant must include such securities, transfers of securities, and disposition of proceeds from the sale or maturity of such securities in the record of investments required to be maintained by § 1.27. All such securities may be segregated in safekeeping only with a bank, trust company, derivatives clearing organization, or other registered futures commission merchant in accordance with the provisions of § 1.20 part. For purposes of this section and §§ 1.27, 1.28, 1.29, and 1.32, securities of the type specified by this section that are owned by the futures commission merchant and deposited into a customer account shall be considered customer funds until such investments are withdrawn from segregation in accordance with the provisions of § 1.23. Investments permitted by § 1.25 that are owned by the futures commission merchant and deposited into a futures customer account pursuant to § 1.26 shall be considered futures customer funds until such investments are withdrawn from segregation in accordance with § 1.23. Investments permitted by § 1.25 that are owned by the futures commission merchant and deposited into a Cleared Swaps Customer Account, as defined in § 22.1 of this chapter, shall be considered Cleared Swaps Customer Collateral, as defined in § 22.1 of this chapter, until such investments are withdrawn from segregation in accordance with § 22.17 of this chapter.

* * * * *

■ 13. Revise § 1.26 to read as follows:

§ 1.26 Deposit of instruments purchased with futures customer funds.

(a) Each futures commission merchant who invests futures customer funds in instruments described in § 1.25, except for investments in money market mutual funds, shall separately account for such instruments as futures customer funds and segregate such instruments as funds belonging to such futures customers in accordance with the requirements of § 1.20. Each derivatives clearing organization which invests money belonging or accruing to futures customers of its clearing members in instruments described in § 1.25, except for investments in money market mutual funds, shall separately account for such instruments as customer funds and segregate such instruments as customer funds belonging to such futures customers in accordance with § 1.20.

(b) Each futures commission merchant or derivatives clearing organization which invests futures customer funds in money market mutual funds, as permitted by § 1.25, shall separately account for such funds and segregate such funds as belonging to such futures customers. Such funds shall be deposited under an account name that clearly shows that they belong to futures customers and are segregated as required by sections 4d(a) and 4d(b) of the Act and by this part. Each futures commission merchant or derivatives clearing organization, upon opening such an account, shall obtain and maintain readily accessible in its files in accordance with § 1.31, for as long as the account remains open, and thereafter for the period provided in § 1.31, a written acknowledgment and shall file such acknowledgment in accordance with the requirements of § 1.20. In the event such funds are held directly with the money market mutual fund or its affiliate, the written acknowledgment shall be in the form as set out in Appendix A or B to this section. In the event such funds are held with a depository, the written acknowledgment shall be in the form as set out in Appendix A or B to § 1.20. In either case, the written acknowledgment shall be obtained, provided to the Commission and designated self-regulatory organizations, and retained as required under § 1.20.

Appendix A to § 1.26—Futures Commission Merchant Acknowledgment Letter for CFTC Regulation 1.26 Customer Segregated Money Market Mutual Fund Account

[Date]

[Name and Address of Money Market Mutual Fund]

We propose to invest funds held by [Name of Futures Commission Merchant] (''we'' or ''our'') on behalf of our customers in shares of [Name of Money Market Mutual Fund] (''you'' or ''your'') under account(s) entitled (or shares issued to):

[Name of Futures Commission Merchant] [if applicable, add ''FCM Customer Omnibus Account''] CFTC Regulation 1.26 Customer Segregated Money Market Mutual Fund Account under Sections 4d(a) and 4d(b) of the Commodity Exchange Act [and, if applicable, '', Abbreviated as [short title reflected in the depository's electronic system]'']

Account Number(s): [ ]

(collectively, the ''Account(s)'').

You acknowledge that we are holding these funds, including any shares issued and amounts accruing in connection therewith (collectively, the ''Shares''), for the benefit of customers who trade commodities, options, swaps and other products (''Commodity Customers''), as required by Commodity Futures Trading Commission (''CFTC'')

Regulation 1.26, as amended; that the Shares held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the ''Act''), and part 1 of the CFTC's regulations, as amended; and that the Shares must otherwise be treated in accordance with the provisions of Section 4d of the Act and CFTC regulations thereunder.

Furthermore, you acknowledge and agree that such Shares may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Shares in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you.

In addition, you agree that the Account(s) may be examined at any reasonable time by the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent or employee of our designated self-regulatory organization (''DSRO''), [Name of DSRO], and this letter constitutes the authorization and direction of the undersigned on our behalf to permit any such examination to take place without further notice to or consent from us.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other account information regarding or related to the Account(s) from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

You further acknowledge and agree that, pursuant to the authorization granted by us to you previously or herein, you have provided, or will provide following the opening of the Account(s), the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor division, or such director's designees, with technological connectivity, which may include provision of hardware, software, and related technology and protocol support, to facilitate direct, read-only electronic access to transaction and account balance information for the Account(s). This letter constitutes the authorization and direction of the undersigned on our behalf for you to establish this connectivity and access if not previously established, without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information and access requests will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information or access request, in order to provide for the secure transmission and delivery of the requested information or access to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information or access request from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Shares held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Shares maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

We are permitted to invest customers' funds in money market mutual funds pursuant to CFTC Regulation 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a money market mutual fund:

(1) The net asset value of the fund must be computed by 9:00 a.m. of the business day following each business day and be made available to us by that time;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request except as otherwise specified in CFTC Regulation 1.25(c)(5)(ii); and,

(3) The agreement under which we invest customers' funds must not contain any provision that would prevent us from pledging or transferring fund shares.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns, and for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) and to [Name of DSRO], acting in its capacity as our DSRO, in accordance with CFTC Regulation 1.20. We hereby authorize and direct you to provide such copies without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Futures Commission Merchant]
By:
Print Name:
Title:
ACKNOWLEDGED AND AGREED:
[Name of Money Market Mutual Fund]
By:
Print Name:
Title:

Contact Information: [Insert phone number and email address]

Date:

Appendix B to § 1.26—Derivatives Clearing Organization Acknowledgment Letter for CFTC Regulation 1.26 Customer Segregated Money Market Mutual Fund Account

[Date]

[Name and Address of Money Market Mutual Fund]

We propose to invest funds held by [Name of Derivatives Clearing Organization] (''we'' or ''our'') on behalf of customers in shares of [Name of Money Market Mutual Fund] (''you'' or ''your'') under account(s) entitled (or shares issued to):

[Name of Derivatives Clearing Organization] Futures Customer Omnibus Account, CFTC Regulation 1.26 Customer Segregated Money Market Mutual Fund Account under Sections 4d(a) and 4d(b) of the Commodity Exchange Act [and, if applicable, '', Abbreviated as [short title reflected in the depository's electronic system]'']

Account Number(s): [ ]

(collectively, the ''Account(s)'').

You acknowledge that we are holding these funds, including any shares issued and amounts accruing in connection therewith (collectively, the ''Shares''), for the benefit of customers who trade commodities, options, swaps and other products, as required by Commodity Futures Trading Commission (''CFTC'') Regulation 1.26, as amended; that the Shares held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the ''Act''), and part 1 of the CFTC's regulations, as amended; and that the Shares must otherwise be treated in accordance with the provisions of Section 4d of the Act and CFTC regulations thereunder.

Furthermore, you acknowledge and agree that such Shares may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Shares in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other account information regarding or related to the Account(s) from the director of the Division of Clearing and Risk of the CFTC or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information requests will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information request from the director of the Division of Clearing and Risk of the CFTC or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event that we or any of our futures commission merchant clearing members become(s) subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Shares held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Shares maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you, or reversed, for any reason and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

We are permitted to invest customers' funds in money market mutual funds pursuant to CFTC Regulation 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a money market mutual fund:

(1) The net asset value of the fund must be computed by 9:00 a.m. of the business day following each business day and be made available to us by that time;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request except as otherwise specified in CFTC Regulation 1.25(c)(5)(ii); and,

(3) The agreement under which we invest customers' funds must not contain any provision that would prevent us from pledging or transferring fund shares.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns, and for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) in accordance with CFTC Regulation 1.20. We hereby authorize and direct you to provide such copies without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Derivatives Clearing Organization]

By:

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

[Name of Money Market Mutual Fund]

By:

Print Name:

Title:

Contact Information: [Insert phone number and email address]

Date:

■ 14. Revise § 1.29 to read as follows:

§ 1.29 Gains and losses resulting from investment of customer funds.

(a) The investment of customer funds in instruments described in § 1.25 shall not prevent the futures commission merchant or derivatives clearing organization so investing such funds from receiving and retaining as its own any incremental income or interest income resulting therefrom.

(b) The futures commission merchant or derivatives clearing organization, as applicable, shall bear sole responsibility for any losses resulting from the investment of customer funds in instruments described in § 1.25. No investment losses shall be borne or otherwise allocated to the customers of the futures commission merchant and, if customer funds are invested by a derivatives clearing organization in its discretion, to the futures commission merchant.

■ 15. Revise § 1.30 to read as follows:

§ 1.30 Loans by futures commission merchants; treatment of proceeds.

Nothing in the regulations in this chapter shall prevent a futures commission merchant from lending its own funds to customers on securities and property pledged by such customers, or from repledging or selling such securities and property pursuant to specific written agreement with such customers. The proceeds of such loans used to purchase, margin, guarantee, or secure the trades, contracts, or commodity options of customers shall be treated and dealt with by a futures commission merchant as belonging to such customers, in accordance with and subject to the provisions of the Act and these regulations. A futures commission merchant may not loan funds on an unsecured basis to finance customers' trading, nor may a futures commission merchant loan funds to customers secured by the customer accounts of such customers.

■ 16. Amend § 1.32 to:

■ a. Revise the section heading;

■ b. Revise paragraphs (b) and (c); and

■ c. Add paragraphs (d), (e), (f), (g), (h), (i), (j), and (k).

The revisions and additions to read as follows:

§ 1.32 Reporting of segregated account computation and details regarding the holding of futures customer funds

* * * * *

(b) In computing the amount of futures customer funds required to be in segregated accounts, a futures commission merchant may offset any net deficit in a particular futures customer's account against the current market value of readily marketable securities, less applicable deductions (*i.e.,* ''securities haircuts'') as set forth in Rule 15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 241.15c3–1(c)(2)(vi)), held for the same futures customer's account. Futures commission merchants that establish and enforce written policies and procedures to assess the credit risk of commercial paper, convertible debt instruments, or nonconvertible debt instruments in accordance with Rule 240.15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vi)) may apply the lower haircut percentages specified in Rule 240.15c3–1(c)(2)(vi) for such commercial paper, convertible debt instruments and nonconvertible debt instruments. The futures commission merchant must maintain a security interest in the securities, including a written authorization to liquidate the securities at the futures commission merchant's discretion, and must segregate the securities in a safekeeping account with a bank, trust company, derivatives clearing organization, or another futures commission merchant. For purposes of this section, a security will be considered readily marketable if it is traded on a ''ready market'' as defined in Rule 15c3–1(c)(11)(i) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(11)(i)).

(c) Each futures commission merchant is required to document its segregation computation required by paragraph (a) of this section by preparing a Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges contained in the Form 1–FR–FCM as of the close of each business day. Nothing in this paragraph shall affect the requirement that a futures commission merchant at all times maintain sufficient money, securities and property to cover its total obligations to all futures customers, in accordance with § 1.20.

(d) Each futures commission merchant is required to submit to the Commission and to the firm's designated self-regulatory organization the daily Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges required by paragraph (c) of this section by noon the following business day.

(e) Each futures commission merchant shall file the Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges required by paragraph (c) of this section in an electronic format using a form of user authentication assigned in accordance with procedures established or approved by the Commission.

(f) Each futures commission merchant is required to submit to the Commission and to the firm's designated self-regulatory organization a report listing the names of all banks, trust companies, futures commission merchants, derivatives clearing organizations, or any other depository or custodian holding futures customer funds as of the fifteenth day of the month, or the first business day thereafter, and the last business day of each month. This report must include:

(1) The name and location of each entity holding futures customer funds;

(2) The total amount of futures customer funds held by each entity listed in paragraph (f)(1) of this section; and

(3) The total amount of cash and investments that each entity listed in paragraph (f)(1) of this section holds for the futures commission merchant. The futures commission merchant must report the following investments:

(i) Obligations of the United States and obligations fully guaranteed as to principal and interest by the United States (U.S. government securities);

(ii) General obligations of any State or of any political subdivision of a State (municipal securities);

(iii) General obligation issued by any enterprise sponsored by the United States (government sponsored enterprise securities);

(iv) Certificates of deposit issued by a bank;

(v) Commercial paper fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation;

(vi) Corporate notes or bonds fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation; and

(vii) Interests in money market mutual funds.

(g) Each futures commission merchant must report the total amount of futures customer-owned securities held by the futures commission merchant as margin collateral and must list the names and locations of the depositories holding such margin collateral.

(h) Each futures commission merchant must report the total amount of futures customer funds that have been used to purchase securities under agreements to resell the securities (reverse repurchase transactions).

(i) Each futures commission merchant must report which, if any, of the depositories holding futures customer funds under paragraph (f)(1) of this section are affiliated with the futures commission merchant.

(j) Each futures commission merchant shall file the detailed list of depositories required by paragraph (f) of this section by 11:59 p.m. the next business day in an electronic format using a form of user authentication assigned in accordance with procedures established or approved by the Commission.

(k) Each futures commission merchant shall retain its daily segregation computation and the Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges required by paragraph (c) of this section, and its detailed list of depositories required by paragraph (f) of this section, together with all supporting documentation, in accordance with the requirements of § 1.31.

■ 17. Revise § 1.52 to read as follows:

§ 1.52 Self-regulatory organization adoption and surveillance of minimum financial requirements.

(a) For purposes of this section, the following terms are defined as follows:

(1) *Examinations expert* is defined as a Nationally recognized accounting and auditing firm with substantial expertise in audits of futures commission merchants, risk assessment and internal control reviews, and is an accounting and auditing firm that is acceptable to the Commission; and

(2) *Self-regulatory organization* means a contract market (as defined in § 1.3(h)) or a registered futures association under section 17 of the Act. The term ''self-regulatory organization'' for purpose of this section does not include a swap execution facility (as defined in § 1.3(rrrr)).

(b)(1) Each self-regulatory organization must adopt rules prescribing minimum financial and related reporting requirements for members who are registered futures commission merchants or registered retail foreign exchange dealers. Each self-regulatory organization other than a contract market must adopt rules prescribing minimum financial and related reporting requirements for members who are registered introducing brokers. The self-regulatory organization's minimum financial and related reporting requirements must be the same as, or more stringent than, the requirements contained in §§ 1.10 and 1.17, for futures commission merchants and introducing brokers, and §§ 5.7 and 5.12 of this chapter for retail foreign exchange dealers; *provided, however,* that a self-regulatory organization may permit its member registrants that are registered with the Securities and Exchange Commission as securities brokers or dealers to file (in accordance with § 1.10(h)) a copy of their Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934 (''FOCUS Report''), Part II, Part IIA, or Part II CSE, as applicable, in lieu of Form 1–FR; *provided, further,* that such self-regulatory organization must require such member registrants to provide all information in Form 1–FR that is not included in the FOCUS Report Part II, Part IIA, or Part CSE provided by such member registrant. The definition of adjusted net capital must be the same as that prescribed in § 1.17(c) for futures commission merchants and introducing brokers, and § 5.7(b)(2) of this chapter for futures commission merchants offering or engaging in retail forex transactions and for retail foreign exchange dealers.

(2) In addition to the requirements set forth in paragraph (b)(1) of this section, each self-regulatory organization that has a futures commission merchant member registrant must adopt rules prescribing risk management requirements for futures commission merchant member registrants that shall be the same as, or more stringent than, the requirements contained in § 1.11.

(c)(1) Each self-regulatory organization must establish and operate a supervisory program that includes written policies and procedures concerning the application of such supervisory program in the examination of its member registrants for the purpose of assessing whether each member registrant is in compliance with the applicable self-regulatory organization and Commission regulations governing minimum net capital and related financial requirements, the obligation to segregate customer funds, risk management requirements, financial reporting requirements, recordkeeping requirements, and sales practice and other compliance requirements. The supervisory program also must address the following elements:

(i) *Adequate levels and independence of examination staff.* A self-regulatory organization must maintain staff of an adequate size, training, and experience to effectively implement a supervisory program. Staff of the self-regulatory organization, including officers, directors, and supervising committee members, must maintain independent judgment and its actions must not impair its independence nor appear to impair its independence in matters related to the supervisory program. The self-regulatory organization must provide annual ethics training to all staff with responsibilities for the supervisory program.

(ii) *Ongoing surveillance.* A self-regulatory organization's ongoing surveillance of member registrants must include the review and analysis of financial reports and regulatory notices filed by member registrants with the designated self-regulatory organization.

(iii) *High-risk firms.* A self-regulatory organization's supervisory program must include procedures for identifying member registrants that are determined to pose a high degree of potential financial risk, including the potential risk of loss of customer funds. High-risk member registrants must include firms experiencing financial or operational difficulties, failing to meet segregation or net capital requirements, failing to maintain current books and records, or experiencing material inadequacies in internal controls. Enhanced monitoring for high risk firms should include, as appropriate, daily review of net capital, segregation, and secured calculations, to assess compliance with self-regulatory organization and Commission requirements.

(iv) *On-site examinations.* (A) A self-regulatory organization must conduct routine periodic on-site examinations of member registrants. Member futures commission merchants and retail foreign exchange dealers must be subject to on-site examinations no less frequently than once every eighteen months. A self-regulatory organization shall establish a risk-based method of establishing the scope of each on-site examination; *provided, however,* that the scope of each on-site examination of a futures commission merchant or retail foreign exchange dealer must include an assessment of whether the registrant is in compliance with applicable Commission and self-regulatory organization minimum capital, customer fund protection, recordkeeping, and reporting requirements.

(B) A self-regulatory organization other than a contract market must establish the frequency of on-site examinations of member introducing brokers that do not operate pursuant to guarantee agreements with futures commission merchants or retail foreign exchange dealers using a risk-based approach, which takes into consideration the time elapsed since the self-regulatory organization's previous examination of the introducing broker.

(C) A self-regulatory organization must conduct on-site examinations of member registrants in accordance with uniform examination programs and procedures that have been submitted to the Commission.

(v) *Adequate documentation.* A self-regulatory organization must adequately document all aspects of the operation of the supervisory program, including the conduct of risk-based scope setting and the risk-based surveillance of high-risk member registrants, and the imposition of remedial and punitive action(s) for material violations.

(2) In addition to the requirements set forth in paragraph (c)(1) of this section, the supervisory program of a self-regulatory organization that has a registered futures commission merchant member must satisfy the following requirements:

(i) The supervisory program must set forth in writing the examination standards that the self-regulatory organization must apply in its examination of its registered futures commission merchant member. The supervisory program must be based on controls testing and substantive testing, and must address all areas of risk to which the futures commission merchant can reasonably be foreseen to be subject. The supervisory program must be based on an understanding of the internal control environment to determine the nature, timing and extent of the controls and substantive testing to be performed. The determination as to which elements of the supervisory program are to be performed on any examination must be based on the risk profile of each registered futures commission merchant member.

(ii) All aspects of the supervisory program, including the standards pursuant to paragraph (c)(2)(iii) of this section, must, at minimum, conform to auditing standards issued by the Public Company Accounting Oversight Board as such standards would be applicable to a non-financial statement audit. These standards would include the training and proficiency of the auditor, due professional care in the performance of work, consideration of fraud in an audit, audit risk and materiality in conducting an audit, planning and supervision, understanding the entity and its environment and assessing the risks of material misstatement, performing audit procedures in response to assessed risk and evaluating the audit evidence obtained, auditor's communication with those charged with governance, and communicating internal control matters identified in an audit.

(iii) The supervisory program must, at a minimum, have standards addressing the following:

(A) The ethics of an examiner;

(B) The independence of an examiner;

(C) The supervision, review, and quality control of an examiner's work product;

(D) The evidence and documentation to be reviewed and retained in connection with an examination;

(E) The sampling size and techniques used in an examination;

(F) The examination risk assessment process;

(G) The examination planning process;

(H) Materiality assessment;

(I) Quality control procedures to ensure that the examinations maintain the level of quality expected;

(J) Communications between an examiner and the regulatory oversight committee, or the functional equivalent of the regulatory oversight committee, of the self-regulatory organization of which the futures commission merchant is a member;

(K) Communications between an examiner and a futures commission merchant's audit committee of the board of directors or other similar governing body;

(L) Analytical review procedures;

(M) Record retention; and

(N) Required items for inclusion in the examination report, such as repeat violations, material items, and high risk issues. The examination report is intended solely for the information and use of the self-regulatory organizations and the Commission, and is not intended to be and should not be used by any other person or entity.

(iv) A self-regulatory organization must cause an examinations expert to evaluate the supervisory program and such self-regulatory organization's application of the supervisory program at least once every three years.

(A) The self-regulatory organization must obtain from such examinations expert a written report on findings and recommendations issued under the consulting services standards of the American Institute of Certified Public Accountants that includes the following:

(*1*) A statement that the examinations expert has evaluated the supervisory program, including the sufficiency of the risk-based approach and the internal controls testing thereof, and comments and recommendations in connection with such evaluation from such examinations expert;

(*2*) A statement that the examinations expert has evaluated the application of the supervisory program by the self-regulatory organization, and comments and recommendations in connection with such evaluation from such examinations expert; and

(*3*) The examinations expert's report should include an analysis of the supervisory program's design to detect material weaknesses in an entity's internal control environment;

(*4*) A discussion and recommendation of any new or best practices as prescribed by industry sources, including, but not limited to, those from the American Institute of Certified Public Accountants, the Public Company Accounting Oversight Board, the Institute of Internal Auditors, and The Risk Management Association.

(B) The self-regulatory organization must provide the written report to the Commission no later than thirty days following the receipt thereof. The self-regulatory organization may also provide to the Commission a response, in writing, to any of the findings, comments or recommendations made by the examinations expert. Upon resolution of any questions or comments raised by the Commission, and upon written notice from the Commission that it has no further comments or questions on the supervisory program as amended (by reason of the examinations expert's proposals, considerations of the Commission's questions or comments, or otherwise), the self-regulatory organization shall commence applying such supervisory program as the standard for examining its registered futures commission merchant members for all examinations conducted with an ''as-of'' date later than the date of the Commission's written notification.

(v) The supervisory program must require the self-regulatory organization to report to its risk and/or audit committee of the board of directors, or a functional equivalent committee, with timely reports of the activities and findings of the supervisory program to assist the risk and/or audit committee of the board of directors, or a functional equivalent committee, to fulfill its responsibility of overseeing the examination function.

(vi) The initial supervisory program shall be established as follows. Within 180 days following the effective date of this section, or such other time as the Commission may approve, the self-regulatory organization shall submit a proposed supervisory program to the Commission for its review and comment, together with a written report that includes the elements found in paragraphs (c)(2)(iv)(A)(*1*) and (*3*) of this section from an examinations expert who has evaluated the supervisory program. The self-regulatory organization may provide the Commission a written response to any findings, comments or recommendations made by the examinations expert. Upon resolution of any questions or comments raised by the Commission, and upon written notice from the Commission that it has no further comments or questions on the proposed supervisory program as amended (by reason of the considerations of the Commission's questions or comments or otherwise), the self-regulatory organizations shall commence applying such supervisory program as the standard for examining its members that are registered as futures commission merchants for all examinations conducted with an ''as-of'' date later than the date of the Commission's written notification.

(vii) The examinations expert's report, the self-regulatory organization's response, as well as any information concerning the supervisory program or any review conducted pursuant to the program that is obtained by the examinations expert, is confidential. Except as expressly provided for in this section, such information may not be disclosed to anyone not involved in the review process.

(d)(1) Any two or more self-regulatory organizations may file with the Commission a plan for delegating to a designated self-regulatory organization, for any registered futures commission merchant, retail foreign exchange dealer, or introducing broker that is a member of more than one such self-regulatory organization, the function of:

(i) Monitoring and examining for compliance with the minimum financial and related reporting requirements and risk management requirements, including policies and procedures relating to the receipt, holding, investing and disbursement of customer funds, adopted by such self-regulatory organizations and the Commission in accordance with paragraphs (b) and (c) of this section; and

(ii) Receiving the financial reports and notices necessitated by such minimum financial and related reporting requirements; *provided, however,* that the self-regulatory organization that delegates the functions set forth in this paragraph (d)(1) shall remain responsible for its member registrants' compliance with the regulatory obligations, and if such self-regulatory organization becomes aware that a delegated function is not being performed as required under this section, the self-regulatory organization shall promptly take any necessary steps to address any noncompliance.

(2) If a plan established pursuant to paragraph (d)(1) of this section applies to any registered futures commission merchant, then such plan must include the following elements:

(i) *The Joint Audit Committee.* The self-regulatory organizations that choose to participate in the plan shall form a Joint Audit Committee, consisting of all self-regulatory organizations in the plan as members. The members of the Joint Audit Committee shall establish, operate and maintain a Joint Audit Program in accordance with the requirements of this section to ensure an effective and a high quality program for examining futures commission merchants, to designate the designated self-regulatory organizations that will be responsible for the examinations of futures commission merchants pursuant to the Joint Audit Program, and to satisfy such additional obligations set forth in this section in order to facilitate the examinations of futures commission merchants by their respective designated self-regulatory organizations.

(ii) *The Joint Audit Program.* The Joint Audit Program must, at minimum, satisfy the following requirements.

(A) The purpose of the Joint Audit Program must be to assess whether each registered futures commission merchant member of the Joint Audit Committee self-regulatory organization members is in compliance with the Joint Audit Program and Commission regulations governing minimum net capital and related financial requirements, the obligation to segregate customer funds, risk management requirements, including policies and procedures relating to the receipt, holding, investment, and disbursement of customer funds, financial reporting requirements, recordkeeping requirements, and sales practice and other compliance requirements.

(B) The Joint Audit Program must include written policies and procedures concerning the application of the Joint Audit Program in the examination of the registered futures commission merchant members of the Joint Audit Committee self-regulatory organization members.

(C)(*1*) *Adequate levels and independence of examination staff.* A designated self-regulatory organization must maintain staff of an adequate size, training, and experience to effectively implement the Joint Audit Program. Staff of the designated self-regulatory organization, including officers, directors, and supervising committee members, must maintain independent judgment and its actions must not impair its independence nor appear to impair its independence in matters related to the Joint Audit Program. The designated self-regulatory organization must provide annual ethics training to all staff with responsibilities for the Joint Audit Program.

(*2*) *Ongoing surveillance.* A designated self-regulatory organization's ongoing surveillance of futures commission merchant member registrants over which it has oversight responsibilities must include the review and analysis of financial reports and regulatory notices filed by such member registrants with the designated self-regulatory organization.

(*3*) *High-risk firms.* The Joint Audit Program must include procedures for identifying futures commission merchant member registrants over which it has oversight responsibilities that are determined to pose a high degree of potential financial risk, including the potential risk of loss of customer funds. High-risk member registrants must include firms experiencing financial or operational difficulties, failing to meet segregation or net capital requirements, failing to maintain current books and records, or experiencing material inadequacies in internal controls. Enhanced monitoring for high risk firms should include, as appropriate, daily review of net capital, segregation, and secured calculations, to assess compliance with self-regulatory and Commission requirements.

(*4*) *On-site examinations.* A designated self-regulatory organization must conduct routine periodic on-site examinations of futures commission merchant member registrants over which it has oversight responsibilities. Such member registrants must be subject to on-site examinations no less frequently than once every eighteen months. A designated self-regulatory organization shall establish a risk-based method of establishing the scope of each on-site examination, *provided, however,* that the scope of each on-site examination of a futures commission merchant must include an assessment of whether the registrant is in compliance with applicable Commission and self-regulatory organization minimum capital, customer fund protection, recordkeeping, and reporting requirements. A designated self-regulatory organization must conduct on-site examinations of futures commission merchant registrants in accordance with the Joint Audit Program.

(D) The Joint Audit Committee members must adequately document all aspects of the operation of the Joint Audit Program, including the conduct of risk-based scope setting and the risk-based surveillance of high-risk member registrants, and the imposition of remedial and punitive action(s) for material violations.

(E) The Joint Audit Program must set forth in writing the examination standards that a designated self-regulatory organization must apply in its examination of a registered futures commission merchant. The Joint Audit Program must be based on controls testing and substantive testing, and must address all areas of risk to which the futures commission merchant can reasonably be foreseen to be subject. The Joint Audit Program must be based on an understanding of the internal control environment to determine the nature, timing and extent of the controls and substantive testing to be performed. The determination as to which elements of the Joint Audit Program are to be performed on any examination must be based on the risk profile of each registered futures commission merchant.

(F) All aspects of the Joint Audit Program, including the standards required pursuant to paragraph (d)(2)(ii)(G) of this section, must, at minimum, conform to auditing standards issued by the Public Company Accounting Oversight Board as such standards would be applicable to a non-financial statement audit. These standards would include the training and proficiency of the auditor, due professional care in the performance of work, consideration of fraud in an audit, audit risk and materiality in conducting an audit, planning and supervision, understanding the entity and its environment and assessing the risks of material misstatement, performing audit procedures in response to assessed risk and evaluating the audit evidence obtained, auditor's communication with those charged with governance, and communicating internal control matters identified in an audit.

(G) The Joint Audit Program must have standards addressing those items listed in paragraph (c)(2)(iii) of this section.

(H) The initial Joint Audit Program shall be established as follows. Within 180 days following the effective date of this section, or such other time as the Commission may approve, the Joint Audit Committee members shall submit a proposed initial Joint Audit Program to the Commission for its review and comment, together with a written report that includes the elements found in paragraphs (d)(2)(ii)(I)(*1*) and (d)(2)(ii)(I)(*3*) of this section from an examinations expert who has evaluated the Joint Audit Program. The Joint Audit Committee members may also provide to the Commission a response, in writing, to any of the findings, comments or recommendations made by the examinations expert. Upon resolution of any questions or comments raised by the Commission, and upon written notice from the Commission that it has no further comments or questions on the proposed Joint Audit Program as amended (by reason of the considerations of the Commission's questions or comments or otherwise), the designated self-regulatory organizations shall commence applying such Joint Audit Program as the standard for examining their respective registered futures commission merchants for all examinations conducted with an ''as-of'' date later than the date of the Commission's written notification.

(I) Following the establishment of the Joint Audit Program, no less frequently than once every three years, the Joint Audit Committee members must cause an examinations expert to evaluate the Joint Audit Program and each designated self-regulatory organization's application of the Joint Audit Program. The Joint Audit Committee members must obtain from such examinations expert a written report, and must provide the written report to the Commission no later than forty-five days prior to the annual meeting of the members of the Joint Audit Committee to be held in that year pursuant to paragraph (d)(2)(iii)(A) of this section. The Joint Audit Committee members may also provide to the Commission a response, in writing, to any of the findings, comments or recommendations made by the examinations expert. The examinations expert's written report must include the following:

(*1*) A statement that the examinations expert has evaluated the Joint Audit Program, including the sufficiency of the risk-based approach and the internal controls testing thereof, and comments and recommendations in connection with such evaluation from such examinations expert;

(*2*) A statement that the examinations expert has evaluated the application of the Joint Audit Program by each designated self-regulatory organization, and comments and recommendations in connection with such evaluation from such examinations expert;

(*3*) The examinations expert's report on findings and recommendations issued under the consulting services standards of the American Institute of Certified Public Accountants and should include an analysis of the supervisory program's design to detect material weaknesses in an entities internal control environment; and

(*4*) A discussion and recommendation of any new or best practices as prescribed by industry sources, including, but not limited to, those from the American Institute of Certified Public Accountants, the Public Company Accounting Oversight Board, the Internal Audit Association and The Risk Management Association.

(J) The examinations expert's report, the Joint Audit Committee's response, as well as any information concerning the supervisory program or any review conducted pursuant to the program that is obtained by the examinations expert, is confidential. Except as expressly provided for in paragraphs (d)(2)(ii)(G) or (d)(2)(ii)(H) of this section, such information may not be disclosed to anyone not involved in the review process.

(K) The Joint Audit Program must require each Joint Audit Committee member to provide to its risk and/or audit committee of the board of directors, or a functionally equivalent committee, with timely reports of the activities and findings of the Joint Audit Program to assist the risk and/or audit committee of the board of directors, or a functionally equivalent committee, in fulfilling its responsibility of overseeing the examination function.

(iii) *Meetings of the Joint Audit Committee.* (A) No less frequently than once every year, the Joint Audit Committee members must meet to consider whether changes to the Joint Audit Program are appropriate, and in considering such, in meetings corresponding to the written report obtained from an examinations expert pursuant to paragraph (d)(2)(ii)(I) of this section, the Joint Audit Committee members must consider such written report, including the results of the examinations expert's assessment of the Joint Audit Program and any additional recommendations. The Commission's questions, comments and proposals must also be considered. Upon written notice from the Commission that it has no further comments or questions on the Joint Audit Program as amended (by reason of the examinations expert's proposals, considerations of the Commission's questions, comments and proposals, or otherwise), the designated self-regulatory organizations shall commence applying such Joint Audit Program as the standard for examining their respective registered futures commission merchants for all examinations conducted with an ''as-of'' date later than the date of the Commission's written notification.

(B) In addition to the items considered in paragraph (d)(2)(iii)(A) of this section, the Joint Audit Committee members must consider the following items during the annual meeting:

(*1*) The role of the Joint Audit Committee and its members as it relates to self-regulatory organization responsibilities;

(*2*) Developing and maintaining the Joint Audit Program for all designated self-regulatory organizations to follow with no exceptions;

(*3*) Coordinating self-regulatory organization responsibilities with those of independent certified public accountants, the Commission and other regulators and self-regulatory organizations (*e.g.,* the Securities and Exchange Commission, the Financial Industry Regulatory Authority, and others, as the case may be for futures commission merchants subject to regulation by multiple regulators and self-regulatory organizations);

(*4*) Coordinating and sharing information between the Joint Audit Committee members, including issues and industry concerns in connection with examinations of futures commission merchants;

(*5*) Identifying industry regulatory reporting issues and financial and operational internal control issues and modifying the Joint Audit Program accordingly;

(*6*) Issuing risk alerts for futures commission merchants and/or designated self-regulatory organization examiners on an as-needed basis as issues arise;

(*7*) Issuing an annual examination alert for certified public accountants and designated self-regulatory organization examiners;

(*8*) Responding to industry issues;

(*9*) Providing industry feedback to Commission proposals; and

(*10*) Developing and maintaining a standard of ethics and independence with which all examination units of the Joint Audit Committee members must comply.

(C) Minutes must be taken of all meetings and distributed to all members on a timely basis.

(D) The Commission must receive timely prior notice of each meeting, have to right to attend and participate in each meeting and receive written copies of the reports and minutes required pursuant to paragraphs (d)(2)(ii)(J) and (d)(2)(iii)(C) of this section, respectively.

(3) The plan referenced in paragraph (d)(1) of this section shall not be effective without Commission approval pursuant to paragraph (h) of this section.

(e) Any plan filed under this section may contain provisions for the allocation of expenses reasonably incurred by designated self-regulatory organizations among the self-regulatory organizations participating in such a plan.

(f) A plan's designated self-regulatory organizations must report to:

(1) That plan's other self-regulatory organizations any violation of such other self-regulatory organizations' rules and regulations for which the responsibility to monitor or examine has been delegated to such designated self-regulatory organization under this section; and

(2) The Director of the Division of Swap Dealer and Intermediary Oversight of the Commission any violation of a self-regulatory organization's rules and regulations or any violation of the Commission's regulations for which the responsibility to monitor, audit, or examine has been delegated to such designated self-regulatory organization under this section.

(g) The Joint Audit Committee members may, among themselves, establish programs to provide access to any necessary financial or related information.

(h) After appropriate notice and opportunity for comment, the Commission may, by written notice, approve such a plan, or any part of the plan, if it finds that the plan, or any part of it:

(1) Is necessary or appropriate to serve the public interest;

(2) Is for the protection and in the interest of customers;

(3) Reduces multiple monitoring and multiple examining for compliance with the minimum financial rules of the Commission and of the self-regulatory organizations submitting the plan of any futures commission merchant, retail foreign exchange dealer, or introducing broker that is a member of more than one self-regulatory organization;

(4) Reduces multiple reporting of the financial information necessitated by such minimum financial and related reporting requirements by any futures commission merchant, retail foreign exchange dealer, or introducing broker that is a member of more than one self-regulatory organization;

(5) Fosters cooperation and coordination among the self-regulatory organizations; and

(6) Does not hinder the development of a registered futures association under section 17 of the Act.

(i) After the Commission has approved a plan, or part thereof, under paragraph (h) of this section, a self-regulatory organization delegating the functions described in paragraph (d)(1) of this section must notify each of its members that are subject to such a plan:

(1) Of the limited scope of the delegating self-regulatory organization's responsibility for such a member's compliance with the Commission's and self-regulatory organization's minimum financial and related reporting requirements; and

(2) Of the identity of the designated self-regulatory organization that has been delegated responsibility for such a member; *provided, however,* that the self-regulatory organization that delegates, pursuant to paragraph (d) of this section, the functions set forth in paragraphs (b) and (c) of this section shall remain responsible for its member registrants' compliance with the regulatory obligations, and if such self-regulatory organization becomes aware that a delegated function is not being performed as required under this section, the self-regulatory organization shall promptly take any necessary steps to address any noncompliance.

(j) The Commission may at any time, after appropriate notice and opportunity for hearing, withdraw its approval of any plan, or part thereof, established under this section, if such plan, or part thereof, ceases to adequately effectuate the purposes of section 4f(b) of the Act or of this section.

(k) Whenever a registered futures commission merchant, a registered retail foreign exchange dealer, or a registered introducing broker holding membership in a self-regulatory organization ceases to be a member in good standing of that self-regulatory organization, such self-regulatory organization must, on the same day that event takes place, give electronic notice of that event to the Commission at its Washington, DC, headquarters and send a copy of that notification to such futures commission merchant, retail foreign exchange dealer, or introducing broker.

(l) Nothing in this section shall preclude the Commission from examining any futures commission merchant, retail foreign exchange dealer, or introducing broker for compliance with the minimum financial and related reporting requirements, and the risk management requirements, as applicable, to which such futures commission merchant, retail foreign exchange dealer, or introducing broker is subject.

(m) In the event a plan is not filed and/or approved for each registered futures commission merchant, retail foreign exchange dealer, or introducing broker that is a member of more than one self-regulatory organization, the Commission may design and, after notice and opportunity for comment, approve a plan for those futures commission merchants, retail foreign exchange dealers, or introducing brokers that are not the subject of an approved plan (under paragraph (h) of this section), delegating to a designated self-regulatory organization the responsibilities described in paragraph (d) of this section.

■ 18. Amend § 1.55 to:

■ a. Revise the section heading;

■ b. Revise paragraphs (b)(2) through (b)(8) and (c); and

■ c. Add paragraphs (b)(9) through (b)(14), (i), (j), (k), (l), (m), (n), and (o).

The revisions and additions to read as follows:

§ 1.55 Public disclosures by futures commission merchants.

* * * * *

(b) * * *

(2) The funds you deposit with a futures commission merchant for trading futures positions are not protected by insurance in the event of the bankruptcy or insolvency of the futures commission merchant, or in the event your funds are misappropriated.

(3) The funds you deposit with a futures commission merchant for trading futures positions are not protected by the Securities Investor Protection Corporation even if the futures commission merchant is registered with the Securities and Exchange Commission as a broker or dealer.

(4) The funds you deposit with a futures commission merchant are generally not guaranteed or insured by a derivatives clearing organization in the event of the bankruptcy or insolvency of the futures commission merchant, or if the futures commission merchant is otherwise unable to refund your funds. Certain derivatives clearing organizations, however, may have programs that provide limited insurance to customers. You should inquire of your futures commission merchant whether your funds will be insured by a derivatives clearing organization and you should understand the benefits and limitations of such insurance programs.

(5) The funds you deposit with a futures commission merchant are not held by the futures commission merchant in a separate account for your individual benefit. Futures commission merchants commingle the funds received from customers in one or more accounts and you may be exposed to losses incurred by other customers if the futures commission merchant does not have sufficient capital to cover such other customers' trading losses.

(6) The funds you deposit with a futures commission merchant may be invested by the futures commission merchant in certain types of financial instruments that have been approved by the Commission for the purpose of such investments. Permitted investments are listed in Commission Regulation 1.25 and include: U.S. government securities; municipal securities; money market mutual funds; and certain corporate notes and bonds. The futures commission merchant may retain the interest and other earnings realized from its investment of customer funds. You should be familiar with the types of financial instruments that a futures commission merchant may invest customer funds in.

(7) Futures commission merchants are permitted to deposit customer funds with affiliated entities, such as affiliated banks, securities brokers or dealers, or foreign brokers. You should inquire as to whether your futures commission merchant deposits funds with affiliates and assess whether such deposits by the futures commission merchant with its affiliates increases the risks to your funds.

(8) You should consult your futures commission merchant concerning the nature of the protections available to safeguard funds or property deposited for your account.

(9) Under certain market conditions, you may find it difficult or impossible to liquidate a position. This can occur, for example, when the market reaches a daily price fluctuation limit (''limit move'').

(10) All futures positions involve risk, and a ''spread'' position may not be less risky than an outright ''long'' or ''short'' position.

(11) The high degree of leverage (gearing) that is often obtainable in futures trading because of the small margin requirements can work against you as well as for you. Leverage (gearing) can lead to large losses as well as gains.

(12) In addition to the risks noted in the paragraphs enumerated above, you should be familiar with the futures commission merchant you select to entrust your funds for trading futures positions. The Commodity Futures Trading Commission requires each futures commission merchant to make publicly available on its Web site firm specific disclosures and financial information to assist you with your assessment and selection of a futures commission merchant. Information regarding this futures commission merchant may be obtained by visiting our Web site, www.[Web site address].

ALL OF THE POINTS NOTED ABOVE APPLY TO ALL FUTURES TRADING WHETHER FOREIGN OR DOMESTIC. IN ADDITION, IF YOU ARE CONTEMPLATING TRADING FOREIGN FUTURES OR OPTIONS CONTRACTS, YOU SHOULD BE AWARE OF THE FOLLOWING ADDITIONAL RISKS:

(13) Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally ''linked'' to a domestic exchange, whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery, and clearing of transactions on such an exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use domestic alternative dispute resolution procedures. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

(14) Finally, you should be aware that the price of any foreign futures or option contract and, therefore, the potential profit and loss resulting therefrom, may be affected by any fluctuation in the foreign exchange rate between the time the order is placed and the foreign futures contract is liquidated or the foreign option contract is liquidated or exercised.

THIS BRIEF STATEMENT CANNOT, OF COURSE, DISCLOSE ALL THE RISKS AND OTHER ASPECTS OF THE COMMODITY MARKETS.

I hereby acknowledge that I have received and understood this risk disclosure statement.

Date

Signature of Customer

(c) The Commission may approve for use in lieu of the risk disclosure document required by paragraph (b) of this section a risk disclosure statement approved by one or more foreign regulatory agencies or self-regulatory organizations if the Commission determines that such risk disclosure statement is reasonably calculated to provide the disclosure required by paragraph (b) of this section. Notice of risk disclosure statements that may be used to satisfy Commission disclosure requirements, what requirements such statements meet and the jurisdictions which accept each format will be set forth in appendix A to this section; *Provided, however,* that an FCM also provides a customer with the risk disclosure statement required by paragraph (b) of this section and obtains the customer's acknowledgment that it has read and understands the disclosure document.

* * * * *

(i) Notwithstanding any other provision of this section, no futures commission merchant may enter into a customer account agreement or first accept funds from a customer, unless the futures commission merchant discloses to the customer all information about the futures commission merchant, including its business, operations, risk profile, and affiliates, that would be material to the customer's decision to entrust such funds to and otherwise do business with the futures commission merchant and that is otherwise necessary for full and fair disclosure. In connection with the disclosure of such information, the futures commission merchant shall provide material information about the topics described in paragraph (k) of this section, expanding upon such information as necessary to keep such disclosure from being misleading, whether through omission or otherwise. The futures commission merchant shall also disclose the same information required by this paragraph to all customers existing on the effective date of this paragraph even if the futures commission merchant and such existing customers have previously entered into a customer account agreement or the futures commission merchant has already accepted funds from such existing customers. The futures commission merchant shall update the information required by this section as and when necessary, but at least annually, to keep such information accurate and complete and shall promptly disclose such updated information to all of its customers. In connection with such obligation to update information, the futures commission merchant shall take into account any material change to its business operation, financial condition and other factors material to the customer's decision to entrust the customer's funds and otherwise do business with the futures commission merchant since its most recent disclosure pursuant to this paragraph, and for this purpose shall without limitation consider events that require periodic reporting required to be filed pursuant to § 1.12. For purposes of this section, the disclosures required pursuant to this paragraph will be referred to as the ''Disclosure Documents.'' The Disclosure Documents shall provide a detailed table of contents referencing and describing the Disclosure Documents.

(j)(1) Each futures commission merchant shall make the Disclosure Documents available to each customer to whom disclosure is required pursuant to paragraph (i) of this section (for purposes of this section, its ''FCM Customers'') and to the general public.

(2) A futures commission merchant shall make the Disclosure Documents available to FCM Customers and to the general public by posting a copy of the Disclosure Documents on the futures commission merchant's Web site. A futures commission merchant, *however,* may use an electronic means other than its Web site to make the Disclosure Documents available to its FCM Customers; *provided* that:

(i) The electronic version of the Disclosure Documents shall be presented in a format that is readily communicated to the FCM Customers. Information is readily communicated to the FCM Customers if it is accessible to the ordinary computer user by means of commonly available hardware and software and if the electronically delivered document is organized in substantially the same manner as would be required for a paper document with respect to the order of presentation and the relative prominence of information; and

(ii) A complete paper copy of the Disclosure Documents shall be provided to an FCM Customer upon request.

(k) *Specific topics.* The futures commission merchant shall provide material information about the following specific topics:

(1) The futures commission merchant's name, address of its principal place of business, phone number, fax number, and email address;

(2) The name, title, business address, business background, areas of responsibility, and the nature of the duties of each person that is defined as a principal of the futures commission merchant pursuant to § 3.1 of this chapter;

(3) The significant types of business activities and product lines engaged in by the futures commission merchant, and the approximate percentage of the futures commission merchant's assets and capital that are used in each type of activity;

(4) The futures commission merchant's business on behalf of its customers, including types of customers, markets traded, international businesses, and clearinghouses and carrying brokers used, and the futures commission merchant's policies and procedures concerning the choice of bank depositories, custodians, and counterparties to permitted transactions under § 1.25;

(5) The material risks, accompanied by an explanation of how such risks may be material to its customers, of entrusting funds to the futures commission merchant, including, without limitation, the nature of investments made by the futures commission merchant (including credit quality, weighted average maturity, and weighted average coupon); the futures commission merchant's creditworthiness, leverage, capital, liquidity, principal liabilities, balance sheet leverage and other lines of business; risks to the futures commission merchant created by its affiliates and their activities, including investment of customer funds in an affiliated entity; and any significant liabilities, contingent or otherwise, and material commitments;

(6) The name of the futures commission merchant's designated self-regulatory organization and its Web site address and the location where the annual audited financial statements of the futures commission merchant is made available;

(7) Any material administrative, civil, enforcement, or criminal complaints or actions filed against the FCM where such complaints or actions have not concluded, and any enforcement complaints or actions filed against the FCM during the last three years;

(8) A basic overview of customer fund segregation, futures commission merchant collateral management and investments, futures commission merchants, and joint futures commission merchant/broker dealers;

(9) Information on how a customer may obtain information regarding filing a complaint about the futures commission merchant with the Commission or with the firm's designated self-regulatory organization; and

(10) The following financial data as of the most recent month-end when the Disclosure Document is prepared:

(i) The futures commission merchant's total equity, regulatory capital, and net worth, all computed in accordance with U.S. Generally Accepted Accounting Principles and § 1.17, as applicable;

(ii) The dollar value of the futures commission merchant's proprietary margin requirements as a percentage of the aggregate margin requirement for futures customers, Cleared Swaps Customers, and 30.7 customers;

(iii) The smallest number of futures customers, Cleared Swaps Customers, and 30.7 customers that comprise 50 percent of the futures commission merchant's total funds held for futures customers, Cleared Swaps Customers, and 30.7 customers, respectively;

(iv) The aggregate notional value, by asset class, of all non-hedged, principal over-the-counter transactions into which the futures commission merchant has entered;

(v) The amount, generic source and purpose of any committed unsecured lines of credit (or similar short-term funding) the futures commission merchant has obtained but not yet drawn upon;

(vi) The aggregated amount of financing the futures commission merchant provides for customer transactions involving illiquid financial products for which it is difficult to obtain timely and accurate prices; and

(vii) The percentage of futures customer, Cleared Swaps Customer, and 30.7 customer receivable balances that the futures commission merchant had to write-off as uncollectable during the past 12-month period, as compared to the current balance of funds held for futures customers, Cleared Swaps Customers, and 30.7 customers; and

(11) A summary of the futures commission merchant's current risk practices, controls and procedures.

(l) In addition to the foregoing, each futures commission merchant shall adopt policies and procedures reasonably designed to ensure that advertising and solicitation activities by each such futures commission merchant and any introducing brokers associated with such futures commission merchant are not misleading to its FCM Customers in connection with their decision to entrust funds to and otherwise do business with such futures commission merchant.

(m) The Disclosure Document required by paragraph (i) of this section is in addition to the Risk Disclosure Statement required under paragraph (a) of this section.

(n) All Disclosure Documents, with each Disclosure Document dated the date of first use, shall be maintained in accordance with § 1.31 and shall be made available promptly upon request to representatives of its designated self-regulatory organization, representatives of the Commission, and representatives of applicable prudential regulators.

(o)(1) Each futures commission merchant shall make the following financial information publicly available on its Web site:

(i) The daily Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Exchanges for the most current 12-month period;

(ii) The daily Statement of Secured Amounts and Funds Held in Separate Accounts for 30.7 Customers Pursuant to Commission Regulation 30.7 for the most current 12-month period;

(iii) The daily Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts Under Section 4d(f) of the Act for the most current 12-month period;

(iv) A summary schedule of the futures commission merchant's adjusted net capital, net capital, and excess net capital, all computed in accordance with § 1.17 and reflecting balances as of the month-end for the 12 most recent months;

(v) The Statement of Financial Condition, the Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Exchanges, the Statement of Secured Amounts and Funds Held in Separate Accounts for 30.7 Customers Pursuant to Commission Regulation 30.7, the Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts Under Section 4d(f) of the Act, an all related footnotes to the above schedules that are part of the futures commission merchant's most current certified annual report pursuant to § 1.16; and

(vi) The Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Exchanges, the Statement of Secured Amounts and Funds Held in Separate Accounts for 30.7 Customers Pursuant to Commission Regulation30.7, and the Statement of Cleared Swaps Customer Accounts Under Section 4d(f) of the Act that are part of the futures commission merchant's unaudited Form 1–FR–FCM or Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934 (''FOCUS Report'') for the most current 12-month period.

(2) To the extent any of the financial data identified in paragraph (1) of this section is amended, the FCM must clearly notate that the data has been amended.

(3) Each futures commission merchant must include a statement on its Web site that is available to the public that financial information regarding the futures commission merchant, including how the futures commission merchant invests and holds customer funds, may be obtained from the National Futures Association and include a link to the Web site of the National Futures Association's Basic System where information regarding the futures commission merchant's investment of customer funds is maintained.

(4) Each futures commission merchant must include a statement on its Web site that is available to the public that additional financial information on all futures commission merchants is available from the Commodity Futures Trading Commission, and include a link to the Commodity Futures Trading Commission's Web page for financial data for futures commission merchants.

PART 3—REGISTRATION

■ 19. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 552, 552b; 7 U.S.C. 1a, 2, 6a, 6b, 6b–1, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 6s, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

■ 20. Amend § 3.3 to revise paragraph (f)(2) to read as follows:

§ 3.3 Chief compliance officer.

* * * * *

(f) * * *

(2) The annual report shall be furnished electronically to the Commission not more than 60 days after the end of the fiscal year of the futures commission merchant, swap dealer, or major swap participant, simultaneously with the submission of Form 1–FR–FCM, as required under § 1.10(b)(2)(ii) of this chapter, simultaneously with the Financial and Operational Combined Uniform Single Report, as required under § 1.10(h) of this chapter, or simultaneously with the financial condition report, as required under section 4s(f) of the Act, as applicable.

* * * * *

PART 22—CLEARED SWAPS

■ 21. The authority citation for part 22 continues to read as follows:

Authority: 7 U.S.C. 1a, 6d, 7a–1 as amended by Pub. L. 111–203, 124 Stat. 1376.

■ 22. Amend § 22.2 to:

■ a. Revise paragraphs (d)(1), (e)(1), (f)(2), (f)(4), (f)(5)(iii)(B), and (g)(2); and

■ c. Add paragraphs (f)(6) and (g)(3) through (g)(10).

The revisions and additions read as follows:

§ 22.2 Futures Commission Merchants: Treatment of Cleared Swaps and Associated Cleared Swaps Customer Collateral.

* * * * *

(d) *Limitations on use.* (1) No futures commission merchant shall use, or permit the use of, the Cleared Swaps Customer Collateral of one Cleared Swaps Customer to purchase, margin, or settle the Cleared Swaps or any other trade or contract of, or to secure or extend the credit of, any person other than such Cleared Swaps Customer. Cleared Swaps Customer Collateral shall not be used to margin, guarantee, or secure trades or contracts of the entity constituting a Cleared Swaps Customer other than in Cleared Swaps, except to the extent permitted by a Commission rule, regulation or order.

* * * * *

(e) * * *

(1) *Permitted investments.* A futures commission merchant may invest money, securities, or other property constituting Cleared Swaps Customer Collateral in accordance with § 1.25 of this chapter, which shall apply to such money, securities, or other property as if they comprised customer funds or customer money subject to segregation pursuant to section 4d(a) of the Act and the regulations thereunder; *Provided, however,* that the futures commission merchant shall bear sole responsibility for any losses resulting from the investment of customer funds in instruments described in § 1.25 of this chapter. No investment losses shall be borne or otherwise allocated to Cleared Swaps Customers of the futures commission merchant.

* * * * *

(f) * * *

(2) The futures commission merchant must reflect in the account that it maintains for each Cleared Swaps Customer, the net liquidating equity for each such Cleared Swaps Customer, calculated as follows: The market value of any Cleared Swaps Customer Collateral that it receives from such customer, as adjusted by:

(i) Any uses permitted under paragraph (d) of this section;

(ii) Any accruals on permitted investments of such collateral under paragraph (e) of this section that, pursuant to the futures commission merchant's customer agreement with that customer, are creditable to such customer;

(iii) Any gains and losses with respect to Cleared Swaps;

(iv) Any charges lawfully accruing to the Cleared Swaps Customer, including any commission, brokerage fee, interest, tax, or storage fee; and

(v) Any appropriately authorized distribution or transfer of such collateral.

* * * * *

(4) The futures commission merchant must, at all times, maintain in segregation, in its FCM Physical Locations and/or its Cleared Swaps Customer Accounts at Permitted Depositories, an amount equal to the sum of any credit balances that the Cleared Swaps Customers of the futures commission merchant have in their accounts. This balance may not be reduced by any debit balances that the Cleared Swaps Customers of the futures commission merchants have in their accounts.

(5) * * *

(iii) * * *

(B) Reduce such market value by applicable percentage deductions (*i.e.,* ''securities haircuts'') as set forth in Rule 15c3–1(c)(2)(vi) of the Securities and Exchange Commission (§ 240.15c3–1(c)(2)(vi) of this title). Futures commission merchants that establish and enforce written policies and procedures to assess the credit risk of commercial paper, convertible debt instruments, or nonconvertible debt instruments in accordance with Rule 240.15c3–1(c)(2)(vi) of the Securities and Exchange Commission (§ 240.15c3–1(c)(2)(vi) of this title) may apply the lower haircut percentages specified in Rule 240.15c3–1(c)(2)(vi) for such commercial paper, convertible debt instruments and nonconvertible debt instruments. The portion of the debit balance, not exceeding 100 percent, that is secured by the reduced market value of such readily marketable securities shall be included in calculating the sum referred to in paragraph (f)(4) of this section.

(6)(i) The undermargined amount for a Cleared Swaps Customer Account is the amount, if any, by which:

(A) The total amount of collateral required for that Cleared Swaps Customer's Cleared Swaps, at the time or times referred to in paragraph (f)(6)(ii) of this section, exceeds—

(B) The value of the Cleared Swaps Customer Collateral for that account, as calculated in paragraph (f)(2) of this section.

(ii) Each futures commission merchant must compute, based on the information available to the futures commission merchant as of the close of each business day,

(A) The undermargined amounts, based on the clearing initial margin that will be required to be maintained by that futures commission merchant for its Cleared Swaps Customers, at each derivatives clearing organization of which the futures commission merchant is a member, at the point of the daily settlement (as described in § 39.14 of this chapter) that will complete during the following business day for each such derivatives clearing organization less

(B) Any debit balances referred to in paragraph (f)(4) of this section included in such undermargined amounts.

(iii)(A) Prior to the time of settlement referenced in paragraph (f)(6)(ii)(A) of this section such futures commission merchant must maintain residual interest in segregated funds that is equal to or exceeds the portion of the computation set forth in paragraph (f)(6)(ii) of this section attributable to the clearing initial margin required by the derivatives clearing organization making such settlement.

(B) A futures commission merchant may reduce the amount of residual interest required in paragraph (f)(6)(iii)(A) of this section to account for payments received from or on behalf of undermargined Cleared Swaps Customers (less the sum of any disbursements made to or on behalf of such customers) between the close of the previous business day and the time of settlement.

(iv) For purposes of paragraph (f)(6)(ii) of this section, a Depositing Futures Commission Merchant should include, as clearing initial margin, customer initial margin that the Depositing Futures Commission Merchant will be required to maintain, for that Depositing Futures Commission Merchant's Cleared Swaps Customers, at a Collecting Futures Commission Merchant, and, for purposes of paragraph (f)(6)(iii) of this section, must do so prior to the time it must settle with that Collecting Futures Commission Merchant.

(g) * * *

(2) Each futures commission merchant is required to document its segregation computation required by paragraph (g)(1) of this section by preparing a Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts Under 4d(f) of the CEA contained in the Form 1–FR–FCM as of the close of business each business day.

(3) Each futures commission merchant is required to submit to the Commission and to the firm's designated self-regulatory organization the daily Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts Under 4d(f) of the CEA required by paragraph (g)(2) of this section by noon the following business day.

(4) Each futures commission merchant shall file the Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts Under 4d(f) of the CEA required by paragraph (g)(2)

of this section in an electronic format using a form of user authentication assigned in accordance with procedures established or approved by the Commission.

(5) Each futures commission merchant is required to submit to the Commission and to the firm's designated self-regulatory organization a report listing the names of all banks, trust companies, futures commission merchants, derivatives clearing organizations, or any other depository or custodian holding Cleared Swaps Customer Collateral as of the fifteenth day of the month, or the first business day thereafter, and the last business day of each month. This report must include:

(i) The name and location of each entity holding Cleared Swaps Customer Collateral;

(ii) The total amount of Cleared Swaps Customer Collateral held by each entity listed in paragraph (g)(5) of this section; and

(iii) The total amount of cash and investments that each entity listed in paragraph (g)(5) of this section holds for the futures commission merchant. The futures commission merchant must report the following investments:

(A) Obligations of the United States and obligations fully guaranteed as to principal and interest by the United States (U.S. government securities);

(B) General obligations of any State or of any political subdivision of a State (municipal securities);

(C) General obligation issued by any enterprise sponsored by the United States (government sponsored enterprise securities);

(D) Certificates of deposit issued by a bank;

(E) Commercial paper fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation;

(F) Corporate notes or bonds fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation; and

(G) Interests in money market mutual funds.

(6) Each futures commission merchant must report the total amount of customer owned securities held by the futures commission merchant as Cleared Swaps Customer Collateral and must list the names and locations of the depositories holding customer owned securities.

(7) Each futures commission merchant must report the total amount of Cleared Swaps Customer Collateral that has been used to purchase securities under agreements to resell the securities (reverse repurchase transactions).

(8) Each futures commission merchant must report which, if any, of the depositories holding Cleared Swaps Customer Collateral under paragraph (g)(5) of this section are affiliated with the futures commission merchant.

(9) Each futures commission merchant shall file the detailed list of depositories required by paragraph (g)(5) of this section by 11:59 p.m. the next business day in an electronic format using a form of user authentication assigned in accordance with procedures established or approved by the Commission.

(10) Each futures commission merchant shall retain its daily segregation computation and the Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under section 4d(f) of the CEA required by paragraph (g)(2) of this section and the detailed listing of depositories required by paragraph (g)(5) of this section, together with all supporting documentation, in accordance with § 1.31 of this chapter.

■ 23. Add § 22.17 to read as follows:

§ 22.17 Policies and procedures governing disbursements of Cleared Swaps Customer Collateral from Cleared Swaps Customer Accounts.

(a) The provision in section 4d(f)(2) of the Act that prohibits the commingling of Cleared Swaps Customer Collateral with the funds of a futures commission merchant, shall not be construed to prevent a futures commission merchant from having a residual financial interest in the funds segregated as required by the Act and the regulations in this part and set apart for the benefit of Cleared Swaps Customers; nor shall such provisions be construed to prevent a futures commission merchant from adding to such segregated funds such amount or amounts of money, from its own funds or unencumbered securities from its own inventory, of the type set forth in § 1.25 of this chapter, as it may deem necessary to ensure any and all Cleared Swaps Customer Accounts are not undersegregated at any time.

(b) A futures commission merchant may not withdraw funds, except withdrawals that are made to or for the benefit of Cleared Swaps Customers, from a Cleared Swaps Customer Account unless the futures commission merchant has prepared the daily segregation calculation required by § 22.2 as of the close of business on the previous business day. A futures commission merchant that has completed its daily segregation calculation may make withdrawals, in addition to withdrawals that are made to or for the benefit of Cleared Swaps Customers, to the extent of its actual residual financial interest in funds held in segregated accounts, including the withdrawal of securities held in segregated safekeeping accounts held by a bank, trust company, derivatives clearing organization or other futures commission merchant. Such withdrawal(s) shall not result in the funds of one Cleared Swaps Customer being used to purchase, margin or carry the trades, contracts or swaps positions, or extend the credit of any other Cleared Swaps Customer or other person.

(c) A futures commission merchant may not withdraw funds, in a single transaction or a series of transactions, that are not made to or for the benefit of Cleared Swaps Customers from Cleared Swaps Customer Accounts if such withdrawal(s) would exceed 25 percent of the futures commission merchant's residual interest in such accounts as reported on the daily segregation calculation required by § 22.2 and computed as of the close of business on the previous business day, unless:

(1) The futures commission merchant's chief executive officer, chief finance officer or other senior official that is listed as a principal of the futures commission merchant on its Form 7–R and is knowledgeable about the futures commission merchant's financial requirements and financial position pre-approves in writing the withdrawal, or series of withdrawals;

(2) The futures commission merchant files written notice of the withdrawal or series of withdrawals, with the Commission and with its designated self-regulatory organization immediately after the chief executive officer, chief finance officer or other senior official pre-approves the withdrawal or series of withdrawals. The written notice must:

(i) Be signed by the chief executive officer, chief finance officer or other senior official that pre-approved the withdrawal, and give notice that the futures commission merchant has withdrawn or intends to withdraw more than 25 percent of its residual interest in such accounts holding Cleared Swaps Customer Accounts funds;

(ii) Include a description of the reasons for the withdrawal or series of withdrawals;

(iii) List the amount of funds provided to each recipient and the name of each recipient;

(iv) Include the current estimate of the amount of the futures commission merchant's residual interest in the swaps customer funds after the withdrawal;

(v) Contain a representation by the chief executive officer, chief finance officer or other senior official that pre-approved the withdrawal, or series of withdrawals, that, after due diligence, to such person's knowledge and reasonable belief, the futures commission merchant remains in compliance with the segregation requirements after the withdrawal. The chief executive officer, chief finance officer or other senior official must consider the daily segregation calculation as of the close of business on the previous business day and any other factors that may cause a material change in the futures commission's residual interest since the close of business the previous business day, including known unsecured customer debits or deficits, current day market activity and any other withdrawals made from the Cleared Swaps Customer Accounts; and

(vi) Any such written notice filed with the Commission must be filed via electronic transmission using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instruction issued by or approved by the Commission. Any such electronic submission must clearly indicate the registrant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer. Any written notice filed must be followed up with direct communication to the Regional office of Commission which has supervisory authority over the futures commission merchant whereby the Commission acknowledges receipt of the notice; and

(3) After making a withdrawal requiring the approval and notice required in paragraphs (c)(1) and (c)(2) of this section, and before the next daily segregated funds calculation, no futures commission merchant may make any further withdrawals from accounts holding Cleared Swaps Customer Account funds, except to or for the benefit of Cleared Swaps Customers, without complying with paragraph (c)(1) of this section and filing a written notice with the Commission under paragraph (c)(2)(vi) of this section and its designated self-regulatory organization signed by the chief executive officer, chief finance officer, or other senior official. The written notice must:

(i) List the amount of funds provided to each recipient and each recipient's name;

(ii) Disclose the reason for each withdrawal;

(iii) Confirm that the chief executive officer, chief finance officer, or other senior official (and identify of the person if different from the person who signed the notice) pre-approved the withdrawal in writing;

(iv) Disclose the current estimate of the futures commission merchant's remaining total residual interest in the segregated accounts holding Cleared Swaps Customer Account funds after the withdrawal; and

(v) Include a representation that to the best of the notice signatory's knowledge and reasonable belief the futures commission merchant remains in compliance with the segregation requirements after the withdrawal.

(d) If a futures commission merchant withdraws funds that are not for the benefit of Cleared Swaps Customers from Cleared Swaps Customer Accounts, and the withdrawal causes the futures commission merchant to not hold sufficient funds in Cleared Swaps Customer Accounts to meet its targeted residual interest, as required to be computed under § 1.11 of this chapter, the futures commission merchant must deposit its own funds into the Cleared Swaps Customer Accounts to restore the targeted amount of residual interest on the next business day, or, if appropriate, revise the futures commission merchant's targeted amount of residual interest pursuant to the policies and procedures required by § 1.11 of this chapter. Notwithstanding the foregoing, if the futures commission merchant's residual interest in Cleared Swaps Customer Accounts is less than the amount required to be maintained by § 22.2 at any particular point in time, the futures commission merchant must immediately restore the residual interest to exceed the sum of such amounts. Any proprietary funds deposited in Cleared Swaps Customer Accounts must be unencumbered and otherwise compliant with § 1.25 of this chapter, as applicable.

(e) Notwithstanding any other provision of this part, a futures commission merchant may not withdraw funds that are not for the benefit of Cleared Swaps Customers from a Cleared Swaps Customer Account unless the futures commission merchant follows its policies and procedures required by § 1.11 of this chapter.

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

■ 24. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6c, and 12a, unless otherwise noted.

■ 25. Amend § 30.1 to add paragraphs (f), (g), and (h) to read as follows:

§ 30.1 Definitions.

* * * * *

(f) *30.7 customer* means any foreign futures or foreign options customer as defined in paragraph (c) of this section as well as any foreign-domiciled person who trades in foreign futures or foreign options through a futures commission merchant; *Provided, however,* that an owner or holder of a proprietary account as defined in § 1.3(y) of this chapter shall not be deemed to be a 30.7 customer.

(g) *30.7 account* means any account maintained by a futures commission merchant for or on behalf of 30.7 customers to hold money, securities, or other property to margin, guarantee, or secure foreign futures or foreign option positions.

(h) *30.7 customer funds* means any money, securities, or other property received by a futures commission merchant from, for, or on behalf of 30.7 customers to margin, guarantee, or secure foreign futures or foreign option positions, or money, securities, or other property accruing to 30.7 customers as a result of foreign futures and foreign option positions.

■ 26. Revise § 30.7 to read as follows:

§ 30.7 Treatment of foreign futures or foreign options secured amount.

(a) *General.* Except as provided in this section, a futures commission merchant must at all times maintain in a separate account or accounts money, securities and property in an amount at least sufficient to cover or satisfy all of its obligations to 30.7 customers denominated as the foreign futures or foreign options secured amount. In computing the foreign futures or foreign options secured amount, a futures commission merchant may offset any net deficit in a particular 30.7 customer's account against the current market value of readily marketable securities held for the same particular 30.7 customer's account as provided for in paragraph (l) of this section. The amount that must be deposited in such separate account or accounts for 30.7 customers must be no less than the amount required to be held in a separate account or accounts for or on behalf of 30.7 customers pursuant to any law, or rule, regulation or order thereunder, or any rule of any self-regulatory organization authorized thereunder, in the jurisdiction in which the depository or the 30.7 customer, as appropriate, is located.

(b) *Location of 30.7 customer funds.* A futures commission merchant shall deposit the foreign futures or foreign options secured amount under an account name that clearly identifies the funds as belonging to 30.7 customers and shows that the foreign futures or foreign options secured amount is set aside as required by this part. A futures commission merchant may deposit funds set aside as the foreign futures or foreign options secured amount with the following depositories:

(1) A bank or trust company located in the United States;

(2) A bank or trust company located outside the United States that has in excess of $1 billion of regulatory capital;

(3) A futures commission merchant registered as such with the Commission;

(4) A derivatives clearing organization;

(5) The clearing organization of any foreign board of trade;

(6) A member of any foreign board of trade; or

(7) Such member's or clearing organization's designated depositories.

(c) *Limitation on holding foreign futures or foreign options secured amount outside of the United States.* A futures commission merchant may not deposit or hold the foreign futures or foreign options secured amount in accounts maintained outside of the United States with any of the depositories listed in paragraph (b) of this section except to meet margin requirements, including prefunding margin requirements, established by rule, regulation, or order of foreign boards of trade or foreign clearing organizations, or to meet margin calls issued by foreign brokers carrying the 30.7 customers' foreign futures and foreign option positions; *Provided, however,* that a futures commission merchant may deposit an additional amount of up to 20 percent of the total amount of funds necessary to meet margin and prefunding margin requirements to avoid daily transfers of funds between the futures commission merchant's 30.7 accounts maintained in the United States and those maintained outside of the United States. A futures commission merchant must deposit 30.7 customer funds under the laws and regulations of the foreign jurisdiction that provide the greatest degree of protection to such funds. A futures commission merchant may not by contract or otherwise waive any of the protections afforded customer funds under the laws of the foreign jurisdiction.

(d) *Written acknowledgment from depositories.* (1) A futures commission merchant must obtain a written acknowledgment from each depository prior to or contemporaneously with the opening of an account by the futures commission merchant with such depository.

(2) The written acknowledgment must be in the form as set out in appendix E to this part; *Provided, however,* that if the futures commission merchant invests funds set aside as the foreign futures or foreign options secured amount in money market mutual funds as a permitted investment under paragraph (h) of this section and in accordance with the terms and conditions of § 1.25(c) of this chapter, the written acknowledgment with respect to such investment must be in the form as set out in appendix F to this part.

(3)(i) A futures commission merchant shall deposit 30.7 customer funds only with a depository that agrees to provide the director of the Division of Swap Dealer and Intermediary Oversight, or any successor division, or such director's designees, with direct, read-only electronic access to transaction and account balance information for 30.7 customer accounts.

(ii) The written acknowledgment must contain the futures commission merchant's authorization to the depository to provide direct, read-only electronic access to 30.7 customer account transaction and account balance information to the director of the Division of Swap Dealer and Intermediary Oversight, or any successor division, or such director's designees, without further notice to or consent from the futures commission merchant.

(4) A futures commission merchant shall deposit 30.7 customer funds only with a depository that agrees to provide the Commission and the futures commission merchant's designated self-regulatory organization with a copy of the executed written acknowledgment no later than three business days after the opening of the account or the execution of a new written acknowledgment for an existing account, as applicable. The Commission must receive the written acknowledgment from the depository via electronic means, in a format and manner determined by the Commission. The written acknowledgment must contain the futures commission merchant's authorization to the depository to provide the written acknowledgment to the Commission and to the futures commission merchant's designated self-regulatory organization without further notice to or consent from the futures commission merchant.

(5) A futures commission merchant shall deposit 30.7 customer funds only with a depository that agrees that accounts containing 30.7 customer funds may be examined at any reasonable time by the director of the Division of Swap Dealer and Intermediary Oversight or the director of the Division of Clearing and Risk, or any successor divisions, or such directors' designees, or an appropriate officer, agent or employee of the futures commission merchant's designated self-regulatory organization. The written acknowledgment must contain the futures commission merchant's authorization to the depository to permit any such examination to take place without further notice to or consent from the futures commission merchant.

(6) A futures commission merchant shall deposit 30.7 customer funds only with a depository that agrees to reply promptly and directly to any request from the director of the Division of Swap Dealer and Intermediary Oversight or the director of the Division of Clearing and Risk, or any successor divisions, or such directors' designees, or an appropriate officer, agent or employee of the futures commission merchant's designated self-regulatory organization for confirmation of account balances or provision of any other information regarding or related to an account. The written acknowledgment must contain the futures commission merchant's authorization to the depository to reply promptly and directly as required by this paragraph without further notice to or consent from the futures commission merchant.

(7) A futures commission merchant shall promptly file a copy of the written acknowledgment with the Commission in the format and manner specified by the Commission no later than three business days after the opening of the account or the execution of a new written acknowledgment for an existing account, as applicable.

(8) A futures commission merchant shall obtain a new written acknowledgment within 120 days of any changes in the following:

(i) The name or business address of the futures commission merchant;

(ii) The name or business address of the depository; or

(iii) The account number(s) under which the foreign futures or foreign options secured amount are held.

(9) A futures commission merchant shall maintain each written acknowledgment readily accessible in its files in accordance with § 1.31 of this chapter, for as long as the account remains open, and thereafter for the

period provided in § 1.31 of this chapter.

(e) *Commingling.* (1) A futures commission merchant may commingle the funds set aside as the foreign futures or foreign options secured amount that it receives from, or on behalf of, multiple 30.7 customers in a single account or multiple accounts with one or more of the depositories listed in paragraph (b) of this section.

(2) A futures commission merchant may not commingle the funds set aside as the foreign futures or foreign options secured amount held for 30.7 customers with the money, securities or property of such futures commission merchant, with any proprietary account of such futures commission merchant, or use such funds to secure or guarantee the obligations of, or extend credit to, such futures commission merchant or any proprietary account of such futures commission merchant; *Provided, however,* a futures commission merchant may deposit proprietary funds into 30.7 customer accounts as permitted under paragraph (g) of this section.

(3) A futures commission merchant may not commingle 30.7 customer funds with funds deposited by futures customers as defined in § 1.3 of this chapter and held in segregated accounts pursuant to section 4d(a) and 4d(b) of the Act or with funds deposited by Cleared Swap Customers as defined in § 22.1 of this chapter and held in segregated accounts pursuant to section 4d(f) of the Act, or with funds of any account holders of the futures commission merchant unrelated to trading foreign futures or foreign options; *Provided, however,* that a futures commission merchant may commingle 30.7 customer funds with funds deposited by futures customers or Cleared Swaps Customers pursuant to the terms of a Commission regulation or order authorizing such commingling.

(f) *Limitations on use of 30.7 customer funds.* (1)(i) A futures commission merchant shall not use, or permit the use of, the funds of one 30.7 customer to purchase, margin or settle the trades, contracts, or commodity options of, or to secure or extend credit to, any person other than such 30.7 customer.

(ii)(A) The undermargined amount for a 30.7 customer's account is the amount, if any, by which

(*1*) The total amount of collateral required for that 30.7 customer's positions in that account, at the time or times referred to in paragraph (f)(1)(ii)(B) of this section, exceeds

(*2*) The value of the 30.7 customer funds for that account, as calculated in paragraph (f)(2)(ii) of this section.

(B) Each futures commission merchant must compute, based on the information available to the futures commission merchant as of the close of each business day,

(*1*) The undermargined amounts, based on the clearing initial margin that will be required to be maintained by that futures commission merchant for its 30.7 customers, at each clearing organization of which the futures commission merchant is a member, at 6:00 p.m. Eastern on the following business day for each such clearing organization less

(*2*) Any debit balances referred to in paragraph (f)(2)(iv) of this section included in such undermargined amounts.

(C)(*1*) Prior to 6:00 p.m. Eastern Time on the date of the settlement referenced in paragraph (f)(1)(ii)(B)(*1*) of this section, such futures commission merchant must maintain residual interest in segregated funds that is at least equal to the computation set forth in paragraph (f)(1)(ii)(B) of this section.

(*2*) A futures commission merchant may reduce the amount of residual interest required in paragraph (f)(1)(ii)(C)(*1*) of this section to account for payments received from or on behalf of undermargined 30.7 customers (less the sum of any disbursements made to or on behalf of such customers) between the close of the previous business day and 6:00 p.m. Eastern Time on the following business day.

(D) For purposes of paragraph (f)(1)(ii)(B) of this section, a futures commission merchant should include, as clearing initial margin, customer initial margin that the futures commission merchant will be required to maintain, for that futures commission merchant's 30.7 customers, at a foreign broker, and, for purposes of paragraph (f)(1)(ii)(C) of this section, must do so prior to 6:00 p.m. Eastern Time on the date referenced in paragraph (f)(1)(ii)(B)(*1*) of this section.

(2) *Requirements as to amount.* (i) For purposes of this paragraph (f)(2), the term ''account'' shall mean the entries on the books and records of a futures commission merchant pertaining to the 30.7 customer funds of a particular 30.7 customer.

(ii) The futures commission merchant must reflect in the account that it maintains for each 30.7 customer the net liquidating equity for each such customer, calculated as follows: The market value of any 30.7 customer funds it receives from such customer, as adjusted by:

(A) Any uses permitted under paragraph (e) of this section;

(B) Any accruals on permitted investments of such collateral under § 1.25 of this chapter that, pursuant to the futures commission merchant's customer agreement with that customer, are creditable to such customer;

(C) Any gains and losses with respect to contracts for the purchase or sale of foreign futures or foreign option positions;

(D) Any charges lawfully accruing to the 30.7 customer, including any commission, brokerage fee, interest, tax, or storage fee; and

(E) Any appropriately authorized distribution or transfer of such collateral.

(iii) If the market value of 30.7 customer funds in the account of a 30.7 customer is positive after adjustments, then that account has a credit balance. If the market value of 30.7 customer funds in the account of a 30.7 customer is negative after adjustments, then that account has a debit balance.

(iv) The futures commission merchant must maintain in segregation an amount equal to the sum of any credit balances that 30.7 customers of the futures commission merchant have in their accounts. This balance may not be reduced by any debit balances that the 30.7 customers of the futures commission merchants have in their accounts.

(3) A futures commission merchant may not impose or permit the imposition of a lien on any funds set aside as the foreign futures or foreign options secured amount, including any residual financial interest of the futures commission merchant in such funds.

(4) A futures commission merchant may not include in funds set aside as the foreign futures or foreign options secured amount any money invested in securities, memberships, or obligations of any clearing organization or board of trade. A futures commission merchant may not include in funds set aside as the foreign futures or foreign options secured amount any other money, securities, or property held by a member of a foreign board of trade, board of trade, or clearing organization, except if the funds are deposited to margin, secure, or guarantee 30.7 customers' foreign futures or foreign options positions and the futures commission merchant obtains the written acknowledgment from the member of the foreign board of trade, board of trade, or clearing organization as required by paragraph (d) of this section.

(g) *Futures commission merchant's residual financial interest and withdrawal of funds.* (1) The provision in paragraph (e) of this section, which prohibits the commingling of funds set aside as the foreign futures or foreign options secured amount with the funds of a futures commission merchant, shall not be construed to prevent a futures commission merchant from having a residual financial interest in the funds set aside as required by the regulations in this part for the benefit of 30.7 customers; nor shall such provisions be construed to prevent a futures commission merchant from adding to such set aside funds such amount or amounts of money, from its own funds or unencumbered securities from its own inventory, of the type set forth in § 1.25 of this chapter, as it may deem necessary to ensure any and all 30.7 accounts from becoming undersecured at any time.

(2) A futures commission merchant may not withdraw funds, except withdrawals that are made to or for the benefit of 30.7 customers, from an account or accounts holding the foreign futures and foreign options secured amount unless the futures commission merchant has prepared the daily 30.7 calculation required by paragraph (l) of this section as of the close of business on the previous business day. A futures commission merchant that has completed its daily 30.7 calculation may make withdrawals, in addition to withdrawals that are made to or for the benefit of 30.7 customers, to the extent of its actual residual financial interest in funds held in 30.7 accounts, including the withdrawal of securities held in secured amount safekeeping accounts held by a bank, trust company, contract market, clearing organization, member of a foreign board of trade, or other futures commission merchant. Such withdrawal(s) shall not result in the funds of one 30.7 customer being used to purchase, margin or guarantee the foreign futures or foreign options positions, or extend the credit of any other 30.7 customer or other person.

(3) A futures commission merchant may not withdraw funds, in a single transaction or a series of transactions, that are not made for the benefit of 30.7 customers from an account or accounts holding 30.7 customer funds if such withdrawal(s) would exceed 25 percent of the futures commission merchant's residual interest in such accounts as reported on the daily secured amount calculation required by paragraph (l) of this section and computed as of the close of business on the previous business day, unless the futures commission merchant's chief executive officer, chief finance officer or other senior official that is listed as a principal of the futures commission merchant on its Form 7–R and is knowledgeable about the futures commission merchant's financial requirements and financial position pre-approves in writing the withdrawal, or series of withdrawals.

(4) A futures commission merchant must file written notice of the withdrawal or series of withdrawals that exceed 25 percent of the futures commission merchant's residual interest in 30.7 customer funds as computed under paragraph (h)(2) of this section with the Commission and with its designated self-regulatory organization immediately after the chief executive officer, chief finance officer or other senior official as described in paragraph (g)(2) of this section pre-approves the withdrawal or series of withdrawals. The written notice must:

(i) Be signed by the chief executive officer, chief finance officer or other senior official that pre-approved the withdrawal, and give notice that the futures commission merchant has withdrawn or intends to withdraw more than 25 percent of its residual interest in accounts holding 30.7 customer funds;

(ii) Include a description of the reasons for the withdrawal or series of withdrawals;

(iii) List the amount of funds provided to each recipient and the name of each recipient;

(iv) Include the current estimate of the amount of the futures commission merchant's residual interest in the 30.7 customer funds after the withdrawal;

(v) Contain a representation by the chief executive officer, chief finance officer or other senior official as described in paragraph (g)(3) of this section that pre-approved the withdrawal, or series of withdrawals, that to such person's knowledge and reasonable belief, the futures commission merchant remains in compliance with the secured amount requirements after the withdrawal. The chief executive officer, chief finance officer or other appropriate senior official as described in paragraph (g)(2) of this section must consider the daily 30.7 calculation as of the close of business on the previous business day and any other factors that may cause a material change in the futures commission's residual interest since the close of business the previous business day, including known unsecured customer debits or deficits, current day market activity and any other withdrawals made from the 30.7 customer accounts; and

(vi) Any such written notice filed with the Commission must be filed via electronic transmission using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instruction issued by or approved by the Commission. Any such electronic submission must clearly indicate the registrant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer. Any written notice filed must be followed up with direct communication to the regional office of Commission which has supervisory authority over the futures commission merchant whereby the Commission acknowledges receipt of the notice.

(5) After making a withdrawal requiring the approval and notice required in paragraphs (c)(1) and (c)(2) of this section, and before the next daily secured amount calculation, no futures commission merchant may make any further withdrawals from accounts holding 30.7 customer funds, except to or for the benefit of 30.7 customers, without, for each withdrawal, obtaining the approval required under paragraph (c)(1) of this section and filing a written notice with the Commission under paragraph (g)(4)(vi) of this section and its designated self-regulatory organization signed by the chief executive officer, chief finance officer, or other senior official. The written notice must:

(i) List the amount of funds provided to each recipient and each recipient's name;

(ii) Disclose the reason for each withdrawal;

(iii) Confirm that the chief executive officer, chief finance officer, or other senior official (and the identity of the person if different from the person who signed the notice) pre-approved the withdrawal in writing;

(iv) Disclose the current estimate of the futures commission merchant's remaining total residual interest in the secured accounts holding 30.7 customer funds after the withdrawal; and

(v) Include a representation that to the best of the notice signatory's knowledge and reasonable belief the futures commission merchant remains in compliance with the secured amount requirements after the withdrawal.

(6) If a futures commission merchant withdraws funds that are not for the benefit of 30.7 customers from the separate accounts holding 30.7 customer funds, and the withdrawal causes the futures commission merchant to not hold sufficient funds in the separate accounts for the benefit of the 30.7 customers to meet its targeted residual interest, as required to be computed

under § 1.11 of this chapter, the futures commission merchant must deposit its own funds into the separate accounts for the benefit of 30.7 customers to restore the account balance to the targeted residual interest amount on the next business day, or, if appropriate, revise the futures commission merchant's targeted amount of residual interest pursuant to the policies and procedures required by § 1.11 of this chapter. Notwithstanding the foregoing, if the futures commission merchant's residual interest in separate accounts for the benefit of 30.7 customers is less than the amount required to be maintained by paragraph (f) of this section at any particular point in time, the futures commission merchant must immediately restore the residual interest to exceed the sum of such amounts. Any proprietary funds deposited in the 30.7 customer accounts must be unencumbered and otherwise compliant with § 1.25 of this chapter, as applicable.

(7) Notwithstanding any other provision of this part, a futures commission merchant may not withdraw funds from 30.7 accounts, except withdrawals that are made for the benefit of 30.7 customers, unless the futures commission merchant follows its policies and procedures required by § 1.11 of this chapter.

(h) *Permitted investments and deposits of 30.7 customer funds.* (1) A futures commission merchant may invest 30.7 customer funds subject to, and in compliance with, the terms and conditions of § 1.25 of this chapter. Regulation 1.25 of this chapter shall apply to the investment of 30.7 customer funds as if such funds comprised customer funds or customer money subject to segregation pursuant to section 4d of the Act and the regulations thereunder.

(2) Each futures commission merchant that invests money, securities or property on behalf of 30.7 customers must keep a record showing the following:

(i) The date on which such investments were made;

(ii) The name of the person through whom such investments were made;

(iii) The amount of money or current market value of securities so invested;

(iv) A description of the obligations in which such investments were made, including CUSIP or ISIN numbers;

(v) The identity of the depositories or other places where such investments are maintained;

(vi) The date on which such investments were liquidated or otherwise disposed of and the amount of money received or current market value of securities received as a result of such disposition;

(vii) The name of the person to or through whom such investments were disposed of; and

(viii) A daily valuation for each instrument and readily available documentation supporting the daily valuation for each instrument. Such supporting documentation must be sufficient to enable third parties to verify the valuations and the accuracy of any information from external sources used in those valuations.

(3) Any 30.7 customer funds deposited in a bank or trust company located in the United States or in a foreign jurisdiction must be available for immediate withdrawal upon the demand of the futures commission merchant.

(4) Futures commission merchants that invest 30.7 customer funds in instruments described in § 1.25 of this chapter shall include such instruments in the computation of its secured amount requirements, required under paragraph (l) of this section, at values that at no time exceed current market value, determined as of the close of the market on the date for which such computation is made.

(i) *Responsibility for § 1.25 investment losses.* A futures commission merchant shall bear sole financial responsibility for any losses resulting from the investment of 30.7 customer funds in instruments described in § 1.25 of this chapter. No investment losses shall be borne or otherwise allocated to the 30.7 customers of the futures commission merchant.

(j) *Loans by futures commission merchants; treatment of proceeds.* A futures commission merchant may lend its own funds to 30.7 customers on securities and property pledged, or from repledging or selling such securities and property pursuant to specific written agreement with such 30.7 customers. The proceeds of such loans used to purchase, margin, guarantee, or secure the trades, contracts, or commodity options of 30.7 customers shall be treated and dealt with by a futures commission merchant as belonging to such 30.7 customers. A futures commission merchant may not loan funds on an unsecured basis to finance a 30.7 customer's foreign futures and foreign options trading, nor may a futures commission merchant loan funds to a 30.7 customer secured by the 30.7 customer's trading account.

(k) *Permitted withdrawals.* A futures commission merchant may withdraw funds from 30.7 customer accounts in an amount necessary in the normal course of business to margin, guarantee, secure, transfer, or settle 30.7 customers' foreign futures or foreign option positions with a foreign broker or clearing organization. A futures commission merchant also may withdraw funds from 30.7 customer accounts to pay commissions, brokerage, interest, taxes, storage, and other charges lawfully accruing in connection with the 30.7 customers' foreign futures and foreign options positions.

(l) *Daily computation of 30.7 customer secured amount requirement and details regarding the holding and investing of 30.7 customer funds.* (1) Each futures commission merchant is required to prepare a Statement of Secured Amounts and Funds Held in Separate Accounts for 30.7 Customers Pursuant to Commission Regulation 30.7 contained in the Form 1–FR–FCM as of the close of each business day. Futures commission merchants that invest funds set aside as the foreign futures or foreign options secured amount in instruments described in § 1.25 of this chapter shall include such instruments in the computation of its secured amount requirements at values that at no time exceed current market value, determined as of the close of the market on the date for which such computation is made. Nothing in this paragraph shall affect the requirement that a futures commission merchant at all times maintain sufficient money, securities and property to cover its total obligations to all 30.7 customers, in accordance with paragraph (a) of this section.

(2) A futures commission merchant may offset any net deficit in a particular 30.7 customer's account against the current market value of readily marketable securities, less deductions (*i.e.,* ''securities haircuts'') as set forth in Rule 15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vi)), held for the same particular 30.7 customer's account in computing the daily Foreign Futures and Foreign Options Secured Amount. Futures commission merchants that establish and enforce written policies and procedures to assess the credit risk of commercial paper, convertible debt instruments, or nonconvertible debt instruments in accordance with Rule 240.15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vi)) may apply the lower haircut percentages specified in Rule 240.15c3–1(c)(2)(vi) for such commercial paper, convertible debt instruments and nonconvertible debt instruments. The futures commission merchant must maintain a security interest in the securities, including a

written authorization to liquidate the securities at the futures commission merchant's discretion, and must set aside the securities in a safekeeping account compliant with paragraph (c) of this section. For purposes of this section, a security will be considered ''readily marketable'' if it is traded on a ''ready market'' as defined in Rule 15c3–1(c)(11)(i) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(11)(i)).

(3) Each futures commission merchant is required to submit to the Commission and to the firm's designated self-regulatory organization the daily Statement of Secured Amounts and Funds Held in Separate Accounts for 30.7 Customers pursuant to Commission Regulation 30.7 required by paragraph (l)(1) of this section by noon the following business day.

(4) Each futures commission merchant shall file the Statement of Secured Amounts and Funds Held in Separate Accounts for 30.7 Customers pursuant to Commission Regulation 30.7 required by paragraph (l)(1) of this section in an electronic format using a form of user authentication assigned in accordance with procedures established or approved by the Commission.

(5) Each futures commission merchant is required to submit to the Commission and to the firm's designated self-regulatory organization a report listing the names of all banks, trust companies, futures commission merchants, derivatives clearing organizations, foreign brokers, foreign clearing organizations, or any other depository or custodian holding 30.7 customer funds as of the fifteenth day of the month, or the first business day thereafter, and the last business day of each month. This report must include:

(i) The name and location of each depository holding 30.7 customer funds;

(ii) The total amount of 30.7 customer funds held by each depository listed in paragraph (l)(5) of this section; and

(iii) The total amount of cash and investments that each depository listed in paragraph (l)(5) of this section holds for the futures commission merchant. The futures commission merchant must report the following investments:

(A) Obligations of the United States and obligations fully guaranteed as to principal and interest by the United States (U.S. government securities);

(B) General obligations of any State or of any political subdivision of a State (municipal securities);

(C) General obligation issued by any enterprise sponsored by the United States (government sponsored enterprise securities);

(D) Certificates of deposit issued by a bank;

(E) Commercial paper fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation;

(F) Corporate notes or bonds fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation; and

(G) Interests in money market mutual funds.

(6) Each futures commission merchant must report the total amount of customer-owned securities held by the futures commission merchant as 30.7 customer funds and must list the names and locations of the depositories holding customer-owned securities.

(7) Each futures commission merchant must report the total amount of 30.7 customer funds that have been used to purchase securities under agreements to resell the securities (reverse repurchase transactions).

(8) Each futures commission merchant must report which, if any, of the depositories holding 30.7 customer funds under paragraph (l)(5) of this section are affiliated with the futures commission merchant.

(9) Each futures commission merchant shall file the detailed list of depositories required by paragraph (l)(5) of this section by 11:59 p.m. the next business day in an electronic format using a form of user authentication assigned in accordance with procedures established or approved by the Commission.

(10) Each futures commission merchant shall retain its daily secured amount computation, the Statement of Secured Amounts and Funds Held in Separate Accounts for 30.7 Customers pursuant to Commission Regulation 30.7 required by paragraph (l)(1) of this section, and the detailed list of depositories required by paragraph (l)(5) of this section, together with all supporting documentation, in accordance with the requirements of § 1.31 of this chapter.

■ 27. Add appendix E to part 30 to read as follows:

Appendix E to Part 30—Acknowledgment Letter for CFTC Regulation 30.7 Customer Secured Account

[Date]

[Name and Address of Depository]

We refer to the Secured Amount Account(s) which [Name of Futures Commission Merchant] (''we'' or ''our'') have opened or will open with [Name of Depository] (''you'' or ''your'') entitled:

[Name of Futures Commission Merchant] [if applicable, add ''FCM Customer Omnibus Account''] CFTC Regulation 30.7 Customer Secured Account under Section 4(b) of the Commodity Exchange Act [and, if applicable, '', Abbreviated as [short title reflected in the depository's electronic system]'']

Account Number(s): [ ]

(collectively, the ''Account(s)'').

You acknowledge that we have opened or will open the above-referenced Account(s) for the purpose of depositing, as applicable, money, securities and other property (collectively ''Funds'') of customers who trade foreign futures and/or foreign options (as such terms are defined in U.S. Commodity Futures Trading Commission (''CFTC'') Regulation 30.1, as amended); that the Funds held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be kept separate and apart and separately accounted for on your books from our own funds and from any other funds or accounts held by us, in accordance with the provisions of the Commodity Exchange Act, as amended (the ''Act''), and Part 30 of the CFTC's regulations, as amended; that the Funds may not be commingled with our own funds in any proprietary account we maintain with you; and that the Funds must otherwise be treated in accordance with the provisions of Section 4(b) of the Act and CFTC Regulation 30.7.

Furthermore, you acknowledge and agree that such Funds may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Funds in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you. This prohibition does not affect your right to recover funds advanced in the form of cash transfers, lines or credit, repurchase agreements or other similar liquidity arrangements you make in lieu of liquidating non-cash assets held in the Account(s) or in lieu of converting cash held in the Account(s) to cash in a different currency.

In addition, you agree that the Account(s) may be examined at any reasonable time by the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent or employee of our designated self-regulatory organization (''DSRO''), [Name of DSRO], and this letter constitutes the authorization and direction of the undersigned on our behalf to permit any such examination to take place without further notice or consent from us.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the Account(s) from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

You further acknowledge and agree that, pursuant to authorization granted by us to you previously or herein, you have provided, or will promptly provide following the opening of the Account(s), the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor division, or such director's designees, with technological connectivity, which may include provision of hardware, software, and related technology and protocol support, to facilitate direct, read-only electronic access to transaction and account balance information for the Account(s). This letter constitutes the authorization and direction of the undersigned on our behalf for you to establish this connectivity and access if not previously established, without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information and access requests will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information or access request, in order to provide for the secure transmission and delivery of the requested information or access to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information or access request from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Funds held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not 30.7 customer funds maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason, and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or Part 30 of the CFTC regulations that relates to the holding of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns and, for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4(b) of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) and to [Name of DSRO], acting in its capacity as our DSRO. We hereby authorize and direct you to provide such copies without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Futures Commission Merchant]
By:
Print Name:
Title:
ACKNOWLEDGED AND AGREED:
[Name of Depository]
By:
Print Name:
Title:
Contact Information: [Insert phone number and email address]
Date:

■ 28. Add appendix F to part 30 to read as follows:

Appendix F to Part 30—Acknowledgment Letter for CFTC Regulation 30.7 Customer Secured Money Market Mutual Fund Account

[Date]

[Name and Address of Money Market Mutual Fund]

We propose to invest funds held by [Name of Futures Commission Merchant] (''we'' or ''our'') on behalf of our customers in shares of [Name of Money Market Mutual Fund] (''you'' or ''your'') under account(s) entitled (or shares issued to):

[Name of Futures Commission Merchant] [if applicable, add ''FCM Customer Omnibus Account''] CFTC Regulation 30.7 Customer Secured Money Market Mutual Fund Account under Section 4(b) of the Commodity Exchange Act [and, if applicable, '', Abbreviated as [short title reflected in the depository's electronic system]'']

Account Number(s): [ ]
(collectively, the ''Account(s)'').

You acknowledge that we are holding these funds, including any shares issued and amounts accruing in connection therewith (collectively, the ''Shares''), for the benefit of customers who trade foreign futures and/or foreign options (as such terms are defined in U.S. Commodity Futures Trading Commission (''CFTC'') Regulation 30.1, as amended); that the Shares held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be kept separate and apart and separately accounted for on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the ''Act''), and Part 30 of the CFTC's regulations, as amended; and that the Shares must otherwise be treated in accordance with the provisions of Section 4(b) of the Act and CFTC Regulations 1.25 and 30.7.

Furthermore, you acknowledge and agree that such Shares may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Shares in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you.

In addition, you agree that the Account(s) may be examined at any reasonable time by the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent or employee of our designated self-regulatory organization (''DSRO''), [Name of DSRO], and this letter constitutes the authorization and direction of the undersigned on our behalf to permit any such examination to take place without further notice to or consent from us.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the Account(s) from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information, without further notice to or consent from us.

You further acknowledge and agree that, pursuant to authorization granted by us to you previously or herein, you have provided, or will promptly provide following the opening of the Account(s), the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor division, or such director's designees, with technological connectivity, which may include provision of hardware, software, and related technology and protocol support, to facilitate direct, read-only electronic access to transaction and account balance information for the Account(s). This letter constitutes the authorization and direction of the undersigned on our behalf for you to establish this connectivity and access if not previously established, without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information and access requests will be made in accordance with, and subject to, such reasonable and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information or access request, in order to provide for the secure transmission and delivery of the requested information or access to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information or access request from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Shares held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Shares maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or Part 30 of the CFTC regulations that relates to the holding of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

We are permitted to invest customers' funds in money market mutual funds pursuant to CFTC Regulation 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a money market mutual fund:

(1) The net asset value of the fund must be computed by 9:00 a.m. of the business day following each business day and be made available to us by that time;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request except as otherwise specified in CFTC Regulation 1.25(c)(5)(ii); and,

(3) The agreement under which we invest customers' funds must not contain any provision that would prevent us from pledging or transferring fund shares.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns and, for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4(b) of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) and to [Name of DSRO], acting in its capacity as our DSRO. We hereby authorize and direct you to provide such copies without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Futures Commission Merchant]
By:
Print Name:
Title:
ACKNOWLEDGED AND AGREED:
[Name of Money Market Mutual Fund]
By:
Print Name:
Title:
Contact Information: [Insert phone number and email address]
DATE:

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

■ 29. The authority citation for part 140 is revised to read as follows:

Authority: 7 U.S.C. 2(a)(12), 12a, 13(c), 13(d), 13(e), and 16(b).

■ 30. Amend § 140.91 to:
■ a. Revise the section heading;
■ b. Redesignate paragraph (a)(8) as paragraph (a)(12), and paragraph (a)(7) as paragraph (a)(8);
■ c. Add new paragraphs (a)(7), (a)(9), (a)(10), and (a)(11); and
■ d. Revise paragraph (b).

The revisions and additions read as follows:

§ 140.91 Delegation of authority to the Director of the Division of Clearing and Risk and to the Director of the Division of Swap Dealer and Intermediary Oversight.

(a) * * *

(7) All functions reserved to the Commission in § 1.20 of this chapter.

* * * * *

(9) All functions reserved to the Commission in § 1.26 of this chapter.

(10) All functions reserved to the Commission in § 1.52 of this chapter.

(11) All functions reserved to the Commission in § 30.7 of this chapter.

* * * * *

(b) The Director of the Division of Clearing and Risk and the Director of the Division of Swap Dealer and Intermediary Oversight may submit any matter which has been delegated to him or her under paragraph (a) of this section to the Commission for its consideration.

Issued in Washington, DC, on November 1, 2013, by the Commission.

Melissa D. Jurgens,

Secretary of the Commission.

Appendices to Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Chilton and Wetjen voted in the affirmative. Commissioner O'Malia voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support this final set of customer protection reforms, which comprehensively enhances the protection around the handling and segregation of futures and swaps customer funds.

Segregation of customer funds is the core foundation of the commodity futures and swaps markets. Segregation must be maintained at all times. That means every moment of every day.

Market events, though, of these last two years highlighted that the Commission must do everything within our authorities and resources to strengthen oversight programs and protection of customer funds.

These reforms are the sixth set of rules finalized by this Commission during a two-year process to ensure that customers have confidence that their funds are segregated and protected. These reforms benefit from the Commission's thorough review of existing customer protection rules—looking for any gaps in those rules and the oversight of these markets.

They benefit from significant public input, including staff roundtables, the Technology Advisory Committee, the Agricultural Advisory Committee and numerous reports submitted by market participants.

They also benefit from input through a coordinated effort of the CFTC with other regulators; the self-regulatory organizations (SROs), such as the CME and the National Futures Association (NFA); as well as congressional reports and input on these matters. I support these rules, in summary, for at least six reasons:

- First, FCMs and clearing members must significantly enhance their supervision of and accounting for customer funds. They will have to put in place additional policies and procedures for these new protections.
- Second, significant enhancements around outside accounting and auditing—regarding the actual accountants or certified public accountants that audit futures commission merchants (FCMs), and also regarding the SROs and how they audit the FCMs.
- Third, significant customer fund protections with regard to how funds are moved around. Basically, when a firm moves money within a firm, how can they move that money around? Some of these reforms were adopted by SROs last year, such as requiring senior management signoff, and the pre-approval of moving those monies. There are also significant new changes to required acknowledgement letters from the banks and custodians.
- Fourth, reforms related to investing in foreign futures accounts. Our Part 30 regime really had not kept pace with protections for domestic futures accounts. With these reforms and the reforms that the NFA had put in place last year, investing in foreign futures accounts will be significantly aligned with the domestic protections.
- Fifth, there's significant new transparency. Transparency to the regulators—we will be able to see electronically custodial accounts and cash accounts on a daily basis. There is transparency to customers, as well, with the twice-a-month statements regarding the details of their funds in the investment accounts. These reforms also have been put in place by the SROs, but it is important that we do this at the federal level as well, and put them in our rules.
- Sixth, the final rules include provisions on capital and residual interest of the FCMs themselves. This was quite possibly the most debated feature of these reforms, but I think they are important. In response to commenters on this provision, we are phasing in compliance to smooth implementation. This section calls for studies and roundtables, and provides for a five-year phase in on these matters.

It is important that we look very closely at the law and work to ensure that one customer's funds or property are not used in some way to secure or guarantee other customer's positions.

Prior to this final rule set, the Commission already had made important improvements to protections for customers:

- Amendments to rule 1.25 regarding the investment of funds that bring customers back to protections they had prior to exemptions the Commission granted between 2000 and 2005. Importantly, this prevents use of customer funds for in-house lending through repurchase agreements;
- Clearinghouses have to collect margin on a gross basis and FCMs are no longer able to offset one customer's collateral against another and then send only the net to the clearinghouse;
- The so-called ''LSOC rule'' (legal segregation with operational comingling) for swaps ensures customer money is protected individually all the way to the clearinghouse;
- The Commission included customer protection enhancements in the final rule for designated contract markets. These provisions codify into rules staff guidance on minimum requirements for SROs regarding their financial surveillance of FCMs; and
- Rules enhancing the protection of customer funds when entering into uncleared swap transactions. These reforms fulfill Congress' mandate that counterparties of swap dealers be given a choice regarding whether or not they get the protections that come from segregation of monies and collateral they post as initial margin.

Appendix 3—Dissenting Statement of Commissioner Scott D. O'Malia—Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations [1]

I respectfully dissent from the Commission's approval today of the final Customer Protection Rules.

I supported the proposed rules because I wanted to solicit public comment and engage market participants in an open discussion about how the Commission should improve its customer protection regulatory oversight.

In the wake of the global financial crisis, it is extremely important to intensify regulatory efforts to strengthen customer protection policies in order to promote the financial stability of the derivatives markets. There is no dispute customer protection must be the cornerstone of the Commission's oversight. Sound customer protection policies and measures, such as the electronic customer verification confirmation services will improve the efficiency and transparency of financial markets.[2]

The Commission must promulgate workable regulations that provide clear guidance to industry participants and ensure cost-effective access to markets. Such regulations must be designed to address real weaknesses in the current regulatory regime and allow industry participants to continue with well-established industry practices that had nothing to do with the financial crisis or the recent bankruptcies of MF Global and Peregrine Financial.

Unfortunately, the Commission's customer protection rules fall short of these objectives. Instead of mitigating customer risk, the rules

[1] ''Customer Protection Rules''

[2] In this regard, I applaud the efforts of the Chicago Mercantile Exchange Inc. (CME) and the National Futures Association (NFA) to protect customer accounts by introducing daily electronic confirmation services. This new technology allows CME and NFA to review balances held at bank depositories and compare the balances with customer account information provide by futures commission merchants (FCMs).

create a false sense of security by imposing broad and ambiguous requirements and introducing another layer of governmental oversight. Even worse, they force a change in a longstanding and generally accepted industry practice that will likely result in seriously harmful consequences for small FCMs and their end-user customers.

I do support several provisions that allow customers greater insight into the operations of an FCM. These provisions include: An improved FCM disclosure regime that will give customers new and critical information about their FCM exposures, elimination of the alternative method of calculating segregation requirements for § 30.7 funds (treatment of foreign futures or foreign options), improved reporting of segregated fund balances, and enhancements to risk management procedures. However, I am unable to support the final rule for the reasons stated below.

Reinterpretation of the Residual Interest Deadline Will Result in Costly Prefunding of Margin Payments

My main concern with the final rules is their radical reinterpretation of the longstanding residual interest deadline. This reinterpretation decreases the time in which customers' margin calls must arrive to their FCM from the current three days to just one day.

Such a change would mean a drastic increase in pre-funding of margin, perhaps nearly double the amounts currently required. As a result, many small agribusiness hedgers will have to consider alternative risk management tools or, even worse, will be forced out of the market.[3] I am disappointed that yet again the Commission has rushed to implement a rule that disregards the express Congressional directive to protect end-users.

I recognize that the Commodity Exchange Act (CEA) does not permit an FCM to use the money or property of one customer to margin the futures or option positions of another customer.[4] Despite this fact, it has been the prevailing industry practice authorized by the Commission for decades.

To the extent that the Commission must reinterpret this statutory provision, I believe this reinterpretation must be based on the thorough analysis of the market data and the full evaluation of the costs of strict compliance with the statute before implementing policy changes, and not after as is the case with the residual interest deadline.

The residual interest deadline rule makes no effort to respond to the commenters' concerns that the residual interest deadline would be especially costly for smaller FCMs and end-users.[5] Given the express Congressional directive to protect end-users, I would have expected the Commission to conduct meaningful cost-benefit analysis to justify the costs when compared to the actual risk to customer accounts and the derivatives markets and to explain why the Commission could not have adopted an alternative approach. Regrettably, the Commission has failed to do so.

Even the Commission's own cost benefit analysis points out, while significantly understating the impact, that:

"Smaller FCMs may have more difficulty than large FCMs in absorbing the additional cost created by the requirements of the rules (particularly § 1.22). It is possible that some smaller FCMs may elect to stop operating as FCMs as a result of these costs." [6]

I cannot support a rule that will impose such onerous costs and compliance burdens on the smallest FCMs and small, non-systemically relevant customers.

Finally, although I support a phase-in compliance schedule for the residual interest deadline, I am disappointed that the Commission, in deciding whether to change the deadline at a future time, is not required to make such a decision based on data. Instead, the Commission will simply come up with another arbitrary residual interest deadline that has nothing to do with customer or FCM risk exposure.

Yet again, the Commission has chosen to avoid fact-based analysis. I strongly believe that the Commission should utilize facts and data to make an informed decision about the appropriate time for the residual interest deadline.

The Rules Fail To Provide a Clear Standard for Compliance.

In addition to my serious concerns about the final rules' treatment of the residual interest deadline, I am concerned that the rules unreasonably expand the scope of the new regulatory compliance regime without providing a clear regulatory objective.

For example, the rules require that a Self-Regulatory Organization (SRO) supervisory program "address *all areas of risk* to which [FCMs] can reasonably be foreseen to be subject (emphasis added)." [7] This broad language requires the SRO to guess at what criteria the programs would be measured against, and under what framework the SRO would make this determination. In short, the new language does nothing but adds more ambiguity to the SRO's customer protection program and increases the cost of compliance with vague requirements.

Examination Experts do not add Value to the Customer Protection Regime

I also have concerns about the requirement that each SRO supervisory program of its member FCMs be reviewed by an "examinations expert." [8] I question the benefit of this requirement given the fact that the Joint Audit Committee (JAC) currently performs this function. The JAC's primary responsibility is to oversee the practices and procedures that each SRO must follow when it conducts audits and financial reviews of FCMs. This regulatory task is already in place and implemented in a less costly and more efficient manner than set forth in the final rules.

Moreover, in light of the Commission's regulatory oversight of all SROs and the Commission's review of all JAC examination programs, this additional layer of review does not provide any benefit except for isolating the Commission from its primary responsibility to oversee customer protection programs.

Customers Deserve Better Protections in Bankruptcy Proceedings

Going forward, the Commission should address key customer protections in the areas of bankruptcy. Congress should make changes to the Bankruptcy Code to ensure that certain bankruptcy protections are afforded to FCM customers. Specifically, Congress should amend the pro-rata distribution rules in bankruptcy. Despite the Commission's customer segregation requirements, individual customer accounts are still subject to a pro-rata distribution in bankruptcy. In addition to these changes to the Bankruptcy Code, the Commission should amend its rules to allow the Commission to appoint a trustee to oversee derivatives customers' accounts in the bankruptcy of a broker-dealer FCM.

Conclusion

I support implementation of a rigorous customer protection program that provides clear and meaningful mechanisms for mitigating customer risks. However, the customer protection rules approved today have missed the mark.

In sum, many of the new rules impose overly broad and nonsensical regulatory requirements and, in doing so, impede the industry's ability to operate in an efficient manner. Regrettably, the negative effects will be felt most by farmers and other end-users, whose ability to hedge risk in a cost-effective manner will be hampered if not eliminated altogether. This is contrary to the Congressional directive, and I cannot support rules that result in such an outcome.

[FR Doc. 2013–26665 Filed 11–13–13; 8:45 am]

BILLING CODE 6351–01–P

[3] *See e.g.;* National Grain and Feed Association Comment Letter at 2 (Dec. 28, 2012) (stating that the Commission's proposed changes "could have the unintended impact of disadvantaging smaller and mid-size FCMs that provide 'hands-on' service to many of the relatively smaller hedgers in agribusiness"); Texas Cattle Feeders Association Comment Letter (Jan. 14, 2013) (warning that such changes "could have the potential to cause unintended consequences such as added costs eventually borne by customers"); Iowa Cattlemen's Association Comment Letter (Feb. 15, 2013) ("it is imperative that the CFTC understand all sizes of businesses . . . [in order to have] . . . a better opportunity to write rules that provide a logical fit. Our fear is that if this rule is put in place, we will have members who will not take advantage of the risk management tools . . . .").

[4] CEA § 4d(a)(2).

[5] Futures Industry Association Comment Letter at 16 (Feb. 15, 2013).

[6] Customer Protection Rules at 313.

[7] § 1.52(c)(2).

[8] § 1.52.

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Gunnison's Prairie Dog as an Endangered or Threatened Species; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2013–0115; 4500030113]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Gunnison's Prairie Dog as an Endangered or Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Gunnison's prairie dog (*Cynomys gunnisoni*) as an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). After review of the best available scientific and commercial information on both subspecies of Gunnison's prairie dog, we find that listing either *C. g. gunnisoni* or *C. g. zuniensis* or both is not warranted at this time. The best available information indicates that populations of both subspecies are stable and that there are no threats causing or projected to cause either subspecies to be at risk of extinction. This action also removes the Gunnison's prairie dog from our candidate list. Although listing is not warranted at this time, we ask the public to submit to us any new information that becomes available concerning threats to the Gunnison's prairie dog or its habitat at any time.

DATES: This finding announced in this document was made on November 14, 2013.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R6–ES–2013–0115. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Colorado Field Office, 134 Union Blvd., Suite 670, Lakewood, CO 80228; telephone (303) 236–4773; facsimile (303) 236–4005. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Susan Linner, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Field Office (see **ADDRESSES**); by telephone at (303) 236–4773; or by facsimile at (303) 236–4005. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition containing substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and whether expeditious progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding; that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register.**

Previous Federal Actions

On February 23, 2004, we received a petition from Forest Guardians (now called WildEarth Guardians) and 73 other organizations and individuals requesting that we list the Gunnison's prairie dog (found in Arizona, Colorado, New Mexico, and Utah) as endangered or threatened. On February 7, 2006, we published a 90-day finding in the **Federal Register** (71 FR 6241) determining that the petition did not present substantial scientific information indicating that listing the Gunnison's prairie dog species may be warranted.

On December 13, 2006, Forest Guardians and eight other organizations or individuals filed a complaint challenging our finding. On June 29, 2007, we reached a settlement agreement with the plaintiffs and agreed to submit a 12-month finding to the **Federal Register** by February 1, 2008.

On February 5, 2008, we published a 12-month finding on the petition to list the Gunnison's prairie dog (73 FR 6660). Our finding determined that the Gunnison's prairie dog warranted listing in a significant portion of its range, or SPR, in northcentral New Mexico and central and southcentral Colorado. In that finding, we determined that the Gunnison's prairie dog warranted listing in the montane portion of its range, but not in the prairie portion, due primarily to the effects of sylvatic plague, an exotic disease. In other words, the SPR determination recognized a difference in status between the montane and prairie portions of the Gunnison's prairie dog range. Although we found listing to be warranted, higher priority listing actions precluded the development of a proposed rule to list the species under the Act, and we added the Gunnison's prairie dog in the montane portion of its range to our candidate species list.

On March 24, 2009, WildEarth Guardians filed a complaint with the courts challenging our interpretation of the Act's SPR language, as used in our February 5, 2008, 12-month finding. On September 30, 2010, the Court found that we determined something other than a species warranted listing, and ordered that we complete a new 12-month finding. Since that Court ruling, montane Gunnison's prairie dogs have remained on our candidate species list awaiting our reevaluation of their status.

Through the annual candidate notice of review process (73 FR 75175, December 20, 2008; 74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011; 77 FR 69993, November 21, 2012), we continued to solicit information from the public regarding the status of the Gunnison's prairie dog, its taxonomy, its life history, its distribution, threats to the species, and ongoing conservation measures designed to protect the species.

On December 9, 2011, the Service and the National Marine Fisheries Service (NMFS) published a notice (76 FR 76987) of draft policy to establish a joint interpretation and application of the Act's statutory phrase ''in danger of extinction throughout all or a significant portion of its range.'' To date we have not finalized our draft SPR policy, and as explained under Significant Portion of the Range, below, we do not follow the draft policy for this finding.

On September 9, 2011, we entered into a multi-district litigation stipulated settlement agreement (*WildEarth Guardians* v. *Salazar,* No. 1:10–mc–00377–EGS (D.D.C.); *Center for Biological Diversity* v. *Salazar,* No. 1:10–mc–00377–EGS (D.D.C.)), which requires that we submit to the **Federal Register** a new 12-month finding on the petition to list the Gunnison's prairie dog, and a proposed rule if warranted, before the end of Fiscal Year 2016. This not-warranted 12-month finding fulfills that requirement of the multi-district litigation stipulated settlement agreement.

Summary of New Information

Since our 2008 12-month finding, we have reviewed new information regarding Gunnison's prairie dog taxonomy and population trends, the dynamics of sylvatic plague, and conservation efforts for the Gunnison's prairie dog. Specifically:

- A genetics study supports the distinctness of two Gunnison's prairie dog subspecies: *Cynomys gunnisoni gunnisoni* and *C. g. zuniensis* (Martin and Sackett 2012, p. 1). The ranges of these two subspecies correspond roughly to the ''montane'' and ''prairie'' ranges described in our 2008 12-month finding, although the results of the genetics study clarify the location of the boundary between the subspecies (Martin and Sackett 2012, p. 14).
- Additional occupancy surveys completed rangewide in 2010 augmented occupancy data collected by all four States in 2007, and by Colorado in 2005. These occupancy data indicate that populations of both subspecies are stable throughout their ranges and within individual population areas (Seglund 2012, p. 11).
- New studies indicate that dusting Gunnison's prairie dog burrows with insecticide effectively controls the intensity and frequency of plague (Biggins *et al.* 2010; Abbott *et al.* 2012, p. 244). In addition, recent laboratory trials have demonstrated the efficacy of an oral vaccine against plague for prairie dogs (Rocke *et al.* 2010, p. 53; Abbott *et al.* 2012, p. 247). Field trails of the oral vaccine began in 2012, and continued in 2013 (Van Pelt 2013, p. 11).

Species Information

Prairie dogs are ground-dwelling squirrels unique to North America, so named for their doglike ''barks'' and broad distribution across the Great Plains, Colorado Plateau, and eastern Great Basin, extending from southern Canada to northern Mexico (Hoogland 2011, p. 918; Fitzgerald *et al.* 2011, p. 136). The Gunnison's prairie dog *(Cynomys gunnisoni*) is one of five prairie dog species, including the white-tailed (*C. leucurus*), the Utah (*C. parvidens*), the black-tailed (*C. ludovicianus*), and the Mexican (*C. mexicanus*) prairie dogs (Goodwin 1995, pp. 100–101; Fitzgerald *et al.* 2011, p. 136). The ranges of the five prairie dog species meet, with limited overlap between Gunnison's prairie dogs and black-tailed prairie dogs in New Mexico (Goodwin 1995, p. 101; Sager 1996, p. 1), and between Gunnison's prairie dogs and white-tailed prairie dogs in Colorado (Knowles 2002, p. 5), but the species do not likely interbreed due to evolutionary divergence. The Gunnison's prairie dog occupies a variety of grasslands and shrub-steppe of intermountain valleys in the southern Rocky Mountains of northern Arizona, southwestern and southcentral Colorado, northwestern New Mexico, and southeastern Utah (Pizzimenti and Hoffman 1973, p. 2; Goodwin 1995, p. 101).

Although *Cynomys gunnisoni gunnisoni* and *C. g. zuniensis* may differ slightly in color, size (Pizzimenti and Hoffman 1973, p. 1), or habitat attributes, they share similar life histories, and therefore we discuss them together as a single species below.

The Gunnison's prairie dog (including both subspecies) has fewer chromosomes (2n = 40) than the other prairie dog species (2n = 50), which suggests its early evolutionary divergence and uniqueness from the other prairie dogs (Pizzimenti and Hoffman 1973, p. 3; Pizzimenti 1975, pp. 10, 14, 60; Goodwin 1995, p. 109). Additionally, the Gunnison's prairie dog is slightly smaller than the black-tailed prairie dog, but larger than the Utah prairie dog (Pizzimenti and Hoffman 1973, p. 1). The Gunnison's prairie dog is also distinguished from other prairie dogs by its darker body and shorter, grayish-white tail (Pizzimenti and Hoffman 1973, p. 1; Fitzgerald *et al.* 2011, p. 138).

Gunnison's prairie dogs dig their own burrows, and hibernate in their underground burrows for approximately 4 months during the winter, beginning in October and ending in mid-February to late-April (Fitzgerald and Lechleitner 1974, p. 150; Hoogland 1998, p. 888; Hoogland 2001, p. 918; Fitzgerald *et al.* 2011, p. 139). Burrows require well-drained, deep soils, with few rocks on the soil surface (Wagner and Drickamer 2004, pp. 188, 195; Seglund *et al.* 2006, pp. 5, 6; Underwood 2007, p. 3). Deep soils are important for establishing hibernation burrows below the frost line (Wagner and Drickamer 2004, pp. 188, 194; Underwood 2007, p. 3). The Gunnison's prairie dog likely evolved to hibernate in order to cope with its arid, nutrient-limited habitats, which feature erratic precipitation and temperature extremes (Rayor *et al.* 1987, p. 149; Seglund *et al.* 2006, p. 7). Prairie dogs hibernate and aestivate (sleep during the summer) when they are metabolically stressed or when the weather is cold (Harlow and Menkens 1986, p. 795; Seglund *et al.* 2006, p. 7; Seglund and Schnurr 2010, p. 14). Lack of precipitation, lack of forage, and extreme daily temperatures drive aestivation and hibernation (Seglund and Schnurr 2010, p. 14), which allow the Gunnison's prairie dog to adapt to changing habitat conditions.

After hibernating, Gunnison's prairie dogs typically breed in April or May, but latitude, elevation, and seasonal variations may influence breeding dates (Hoogland 1998, p. 888; Hoogland 2001, p. 923; Fitzgerald *et al.* 2011, p. 139). With adequate resources, females breed as yearlings, but may not breed until their second year if food is scarce (Hall 1981, p. 414; Hoogland 1999, p. 249; Hoogland 2001, p. 923; Seglund *et al.* 2006, p. 7). Body mass, which is directly correlated to the availability of food, influences reproductive success, and underscores the importance of suitable habitats (Hoogland 2001, p. 923; Underwood 2007, p. 4). Females may mate with up to five different males, a reproductive strategy that maximizes breeding success and promotes genetic diversity between pups (Hoogland 1998, p. 882; Haynie *et al.* 2003, p. 1251; Seglund *et al.* 2006, p. 7; Underwood 2007, p. 5).

Compared to other small rodents, Gunnison's prairie dogs reproduce relatively slowly. Females are sexually receptive for several hours on only one day of the year and therefore wean a maximum of one small litter per year (Hoogland 1998, p. 889; Hoogland 2001, pp. 919, 921, 923; Seglund *et al.* 2006, p. 7). Other small rodents often wean more than two litters per year (Hoogland 2001, p. 921; Seglund *et al.* 2006, p. 7). Litters are small, ranging in size from 2 to 7 pups, with an average of 3.77 pups (Fitzgerald *et al.* 2011, p. 139). When food is plentiful, reproduction is more successful, but females remain physiologically limited to only one litter per year (Hoogland 2001, p. 923; Seglund *et al.* 2006, p. 7). In addition to breeding only once annually, small litter sizes, low annual survivorship, and delayed reproduction in yearling males also slow reproduction in the Gunnison's prairie dog (Hoogland 2001, p. 917; Seglund *et al.* 2006, p. 7; Underwood 2007, p. 5).

Despite their relatively slow reproduction, Gunnison's prairie dogs reproduce more rapidly under certain conditions (Hoogland 2001, p. 923). Young, expanding colonies reproduce faster because resources are more plentiful (Rayor 1985b, p. 2835; Hoogland *et al.* 2001, p. 923). Additionally, reproductive rates increase and colonies expand following dramatic population crashes caused by shooting, poisoning, or plague (Hoogland 2001, p. 923). For example, new colonies may triple in size each year following a plague outbreak as the surviving prairie dogs disperse and form new colonies, and as the juveniles grow faster, survive longer, and breed at an earlier age (Cully 1997, pp. 146, 153–154, 156; Wagner and Drickamer 2002, p. 16; Seglund *et al.* 2006, p. 8; Underwood 2007, p. 7; Fitzgerald *et al.* 2011, p. 139). In general, this cycle of local extirpation and subsequent colonization allows populations to survive and expand rapidly following dramatic losses (Wagner and Drickamer 2002, p. 16; Seglund *et al.* 2006, pp. 8, 16; Underwood 2007, p. 7). In Gunnison's prairie dogs, the ability to rebound after crashes depends largely on the maintenance of a metapopulation structure, as discussed below.

Gunnison's prairie dogs live in family groups called clans, with adjacent clans forming a colony (Fitzgerald and Lechleitner 1974, p. 149; Hoogland 1999, p. 243; Goodwin 2001, p. 918). Clans include 1 to 19 individuals (mean 5.3) with 21 to 23 clans per colony (Hoogland 1999, p. 245; Fitzgerald *et al.* 2011, p. 140; Underwood 2007, p. 4; Seglund and Schnurr 2010, p. 16). Clan members defend a home territory of approximately 2.5 acres (ac) (1 hectare (ha)), but commonly forage outside the home territory in the weakly defended peripheral sections of territories belonging to other clans (Hoogland 1998, pp. 887–888; Hoogland 1999, pp. 245, 248; Seglund *et al.* 2006, p. 6). Although clans display social cohesion, Gunnison's prairie dogs are not as socially organized as black-tailed prairie dogs and have a less defined social hierarchy (Fitzgerald and Lechleitner 1974, p. 155; Hall 1981, p. 414; Goodwin 1995, p. 101; Hoogland 1999, p. 248; Haynie *et al.* 2003, p. 1245; Fitzgerald *et al.* 2011, p. 140).

Gunnison's prairie dogs are a colonial species, historically occurring in large complexes of colonies over large areas. Within colonies, prairie dog densities vary widely, ranging from 2 to 23 Gunnison's prairie dogs per ac (5 to 57 per ha) (Seglund *et al.* 2006, p. 8; Underwood 2007, p. 6; Fitzgerald *et al.* 2011, p. 140). Within colonies, burrows may be densely aggregated or scattered and isolated, the density likely driven by the quality and quantity of vegetation (Underwood 2007, p. 6). Colonial behavior offers an effective defense mechanism by aiding in the detection of predators, but it also can play an important role in the transmission of disease (Hoogland 1999, p. 248; Biggins and Kosoy 2001, p. 911; Antolin *et al.* 2002, p. 19). Through their burrowing and grazing, colonies influence the abundance and diversity of other prairie species, and serve as a relatively constant prey base, such that the Gunnison's prairie dog is a keystone species (Kotliar *et al.* 1999, p. 183; Wagner and Drickamer 2002, p. 1; Seglund *et al.* 2006, p. 5; Underwood 2007, p. 7; Fitzgerald *et al.* 2011, p. 139).

Complexes of Gunnison's prairie dog colonies form metapopulations, or an ensemble of interacting, local populations linked together by dispersing individuals (Hanski and Gilpin 1991, pp. 4, 6; Wagner and Drickamer 2002, p. 15). Populations within a metapopulation may be isolated, such that the dispersing individuals must move across unsuitable habitats or may fail to locate another suitable habitat patch to colonize (Hanski and Gilpin 1991, p. 7).

A metapopulation helps spread the risk of extinction across the multiple populations in order to increase survival during a stochastic (random) or catastrophic event (Den Boer 1968, p. 166). In other words, a metapopulation ensures that local extinctions are offset by dispersers from other local populations who establish new populations or colonize the empty habitats (Hanski and Gilpin 1991, pp. 7, 9). The metapopulation provides a ready cache of individuals to repopulate. The dispersing individuals link the populations within a metapopulation, so their dispersal capabilities are fundamentally important to the structure of the metapopulation. Factors that inhibit or impair dispersal would also impact the metapopulation. For example, habitat fragmentation may isolate colonies beyond dispersal distances such that the metapopulation collapses (Hanski and Gilpin 1991, p. 13; Wagner and Drickamer 2002, p. 16). Within suitable habitats, leap-frog colonization radiating from expanding colonies may eventually reestablish the metapopulation (Wagner and Drickamer 2002, p. 16).

According to the cycle of local extirpation and recolonization, metapopulations of Gunnison's prairie dog populations expand or contract over time depending upon various natural factors (such as reproduction, food availability, and disease) and human-caused factors (such as poisoning and shooting). The Gunnison's prairie dog requires a metapopulation structure across the landscape to substantially augment depleted populations or replace populations without human intervention, so that migration between colonies is possible (Clark *et al.* 1982, pp. 574–575; Gilpin and Soule 1986, p. 24; Lomolino and Smith 2001, p. 938).

Gunnison's prairie dogs disperse in the fall before hibernating, and in the spring before breeding (Travis *et al.* 1996, p. 95; Seglund 2006, p. 8). When not dispersing, Gunnison's prairie dogs are relatively sedentary and tend to remain within the boundaries of their colony (Kotliar *et al.* 1999, p. 183; Wagner and Drickamer 2004, p. 188). Approximately 95 percent of females remain in their natal territory for life, but only 5 percent of males remain in their natal territory for more than 1 year (Hoogland 1999, p. 247; Seglund *et al.* 2006, p. 8). Dispersal distances range from 112 to 1,886 feet (34 to 575 meters), and may be as long as 4.8 miles (7.7 kilometers) (Hoogland 1999, p. 247; Seglund *et al.* 2006, p. 8; Seglund and Schnurr 2010, p. 15). The disappearance of related kin motivates dispersal (Hoogland 2013, p. 1205). Maximum travel distances have not been recorded for the Gunnison's prairie dog, but black-tailed prairie dogs may move up to 6.2 miles (10 kilometers) when dispersing, frequently traveling along roads or cattle trails (Knowles 1985, pp. 37–38; Wagner and Drickamer 2002, p. 16).

Taxonomy

The genus Cynomys is split into two subgenera; Leucocrossuromys includes prairie dogs with white tails, and Cynomys includes prairie dogs with black tails. Gunnison's prairie dogs are included in the subgenus Leucocrossuromys along with the Utah and white-tailed prairie dogs (Clark *et al.* 1971, p. 1; Pizzimenti 1975, pp. 15–16; Seglund *et al.* 2006, p. 3).

Early taxonomists divided the Gunnison's prairie dog into two subspecies, *Cynomys gunnisoni gunnisoni* and *C. g. zuniensis,* based on morphological differences (Hollister 1916, pp. 29–32). However, later morphological and genetic analyses disputed the designation of subspecies (Pizzimenti 1975, pp. 11, 15, 63; Goodwin 1995, pp. 100, 101, 110; Seglund *et al.* 2006, p. 3). Later, an unpublished study used genetics to again support the designation of two subspecies (Hafner 2004, p. 6; Hafner *et al.* 2005, p. 2; NMDGF 2008, p. 2). However, during the status review for our 2008 12-month finding, we determined that this genetics study was too preliminary to substantiate the designation of two subspecies, and we did not recognize the subspecific taxonomy of the Gunnison's prairie dog. However, we anticipated that an ongoing genetics study could clarify the taxonomy of the Gunnison's prairie dog.

The results of this genetics study are now available in an unpublished report that provides support for the taxonomic differentiation of the Gunnison's prairie dog into two subspecies: *Cynomys gunnisoni gunnisoni* and *C. g. zuniensis* (Martin and Sackett 2012, p. 14). Following a thorough analysis of 12 different lines of genetic evidence, the report proposes two distinct subspecies of Gunnison's prairie dog that correspond roughly to the previously recognized ''montane'' and ''prairie'' forms (Martin and Sackett 2012). *C. g. gunnisoni* occurs in the ''montane'' northeastern part of the Gunnison's prairie dog's range in Colorado and New Mexico. *C. g. zuniensis* occurs in the ''prairie'' southwestern part of the range in southeastern Utah, southwestern Colorado, northwestern New Mexico, and northeastern Arizona (Figure 1). The genetics results support previous hypotheses that there are two geographically separated, but overlapping, genetic groups of Gunnison's prairie dog (Martin and Sackett 2012, p. 14). Although this report is currently awaiting peer-review and publication, it provides the best available information regarding the subspecific taxonomy of the Gunnison's prairie dog.

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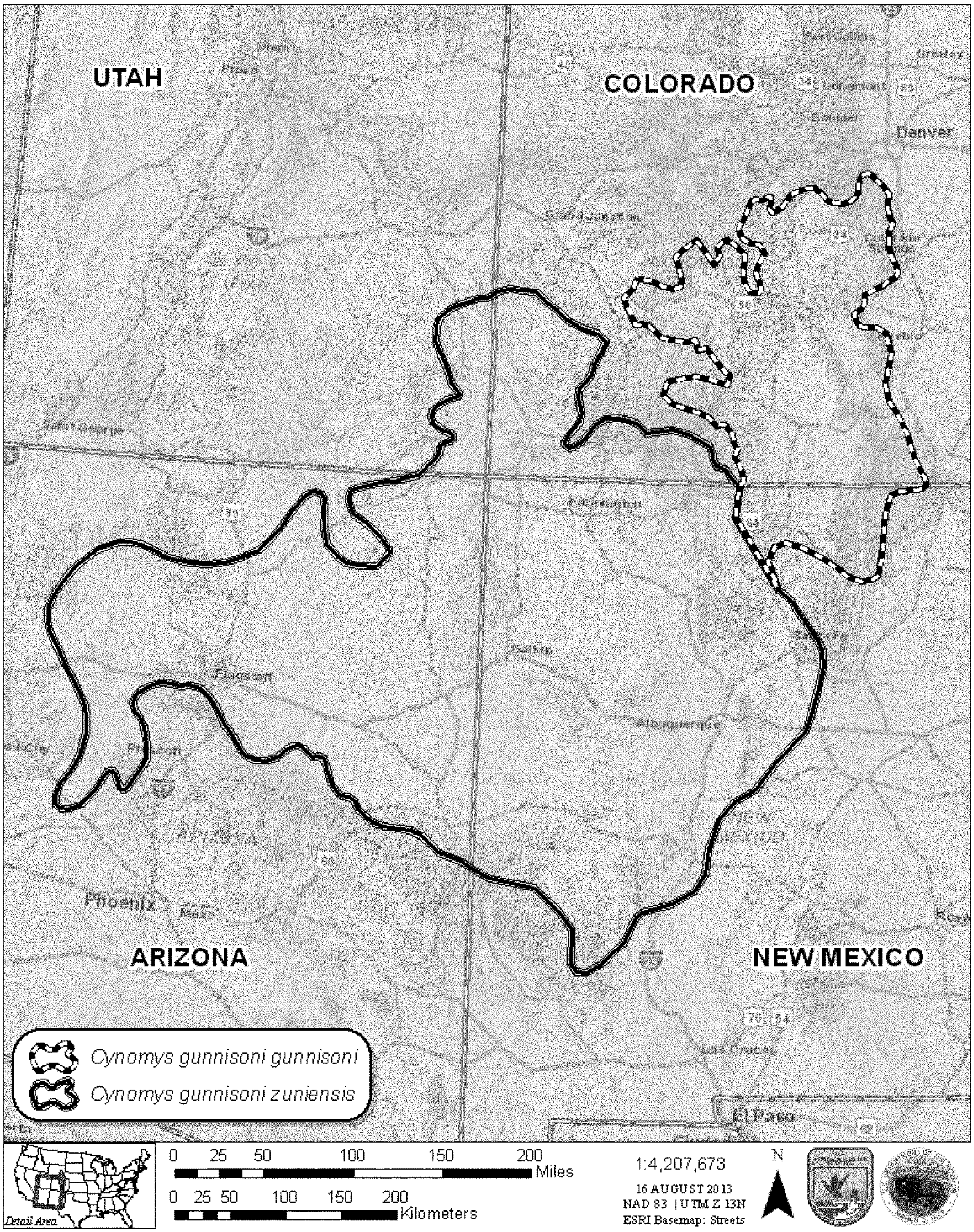
FIGURE 1: APPROXIMATE RANGE OF THE GUNNISON'S PRAIRIE DOG



The genetics data also clarified the location of the boundary between the two subspecies. Previously, genetic analysis described the boundary as a diagonal line extending from south-central Colorado to northeastern New Mexico, but with a substantial, southwestern extension, or ''tongue'' of *Cynomys gunnisoni gunnisoni* extending into Albuquerque, New Mexico. Now, genetic data indicate that the boundary should be redrawn as a straight line, and provide little support for the southern extension, or ''tongue'' of *Cynomys gunnisoni gunnisoni* into northcentral New Mexico near Albuquerque (Martin and Sackett 2012, p. 14). We used this information to draw the approximate range of both subspecies, as illustrated in Figure 1. However, there is evidence of genetic mixing and overlap across this boundary, as individuals living in colonies along the boundary have genetic code from both subspecies (Martin and Sackett 2012, pp. 13–14). In other words, *C. g. gunnisoni* and *C. g. zuniensis* along the boundary have interbred or currently interbreed. However, the extent, scope, and taxonomic consequences of this genetic mixing along the boundary are unclear.

Based on this new genetic analysis, we accept the subspecific taxonomy of the Gunnison's prairie dog as *Cynomys gunnisoni gunnisoni* and *C. g. zuniensis.* Both subspecies are valid taxonomic subspecies of the Gunnison's prairie dog and are listable entities under the Act. This finding evaluates both subspecies.

Habitat

Gunnison's prairie dogs establish their colonies on gently sloping grasslands and semi-desert and montane shrublands, at elevations ranging from 4,600 to 12,000 feet (1,400 to 3,660 meters) (Bailey 1932, p. 125; Pizzimenti and Hoffman 1973, p. 1; Findley *et al.* 1975, p. 133; Wagner and Drickamer 2002, p. 4; NMDGF 2008, p. 9; Seglund *et al.* 2006, p. 4; Fitzgerald *et al.* 2011, pp. 138, 139). They primarily eat grasses, and will occasionally eat forbs, sedges, and shrubs (Pizzimenti and Hoffman 1973, p. 3; Shalaway and Slobodchikoff 1988, p. 840; Seglund *et al.* 2006, p. 5; Fitzgerald *et al.* 2011, p. 139). Gunnison's prairie dog habitats are arid, unpredictable, and often characterized by limited vegetation and short growing seasons (Seglund and Schnurr 2010, pp. 17, 18).

The two subspecies occupy similar prairie habitats at different elevations. *Cynomys gunnisoni gunnisoni,* in central and southcentral Colorado and northcentral New Mexico, occupies high-elevation, cool, and mesic (wet) plateaus, benches, and intermountain valleys. Grass-shrub vegetation in low valleys and mountain meadows bordered by steep topography dominate these habitats (Seglund *et al.* 2005, p. 12). *Cynomys gunnisoni zuniensis* in southeastern Utah, southwestern Colorado, northwestern New Mexico, and northeastern Arizona occupies lower elevation, xeric (dry) plains and plateaus (Bailey 1932, pp. 125–127; Pizzamenti and Hoffman 1973, pp. 1–2; Hall 1981, p. 7; Knowles 2002, p. 4). *C. g. zuniensis* occupies grass-shrub prairies within these habitats (Seglund *et al.* 2005, p. 12).

Distribution, Abundance, and Trends

As illustrated in Figure 1, we mapped the overall distribution of *Cynomys gunnisoni gunnisoni* and *C. g. zuniensis* as an approximate ''overall range.'' However, the ''overall range'' is a gross estimate because the subspecies do not occupy or potentially occupy all lands within its boundaries (Seglund *et al.* 2006, p. 70). Instead, the ''predicted range'' is a subset of the overall range and represents a more accurate spatial representation of the potential range of the subspecies (Seglund *et al.* 2006, p. 9; Seglund and Schnurr 2010, p. 20). Habitat characteristics, such as vegetation and slope, built the predicted range model. Compared to the overall range, the predicted range provides a more accurate, spatial range for the Gunnison's prairie dog, but it similarly does not imply that all the areas are occupied or suitable.

A predicted range model estimates that the Gunnison's prairie dog could occupy 23,459,525 ac (9,493,733 ha) across the four States in its range (Seglund *et al.* 2006, p. 70). At the species level, approximately 27 percent of this potential Gunnison's prairie dog (*Cynomys gunnisoni*) range occurs in Arizona, 25 percent in Colorado, 45 percent in New Mexico, and 3 percent in Utah (Seglund *et al.* 2006, p. 70).

We used a predicted range model (USGS 2011) for the Gunnison's prairie dog, with the revised overall range for both *Cynomys gunnisoni gunnisoni* and *C. g. zuniensis* and updated landownership data (BLM 2011; BLM 2012a; BLM 2012b; BLM 2013) to approximate the percentages of each subspecies' potential range by State and landowner (Table 1). Colorado supports the largest percentage, 81 percent, of *Cynomys gunnisoni gunnisoni'*s potential range, with the remaining 19 percent in New Mexico. New Mexico and Arizona support the largest percentage of *C. g. zuniensis'* potential range, 48 and 42 percent respectively, with 7 percent of *C. g. zuniensis'* potential range in Colorado and 3 percent in Utah (Table 1).

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Table 1. Percent of *Cynomys gunnisoni gunnisoni* and *C. g. zuniensis* predicted range (USGS 2011) by State and landowner.

		C. g. gunnisoni			*C. g. zuniensis*					*C. gunnisoni*
		Colorado	**New Mexico**	**Subspecies' Range**	**Colorado**	**New Mexico**	**Arizona**	**Utah**	**Subspecies' Range**	**Species' Range**
	Percent of Predicted Range for each Subspecies	81	19	100	7	48	42	3	100	100
PERCENT OF PREDICTED RANGE BY LANDOWNER	**Private**	11	38	50	29	27	22	17	25	27
	State	40	11	5	2	8	13	6	10	9
	Tribal/Bureau of Indian Affairs	0	3	<1	25	33	53	25	40	36
	Bureau of Land Management	42	37	32	37	19	1	48	14	16
	National Park Service	2	0	2	1	1	2	0	1	1
	U.S. Forest Service	3	11	9	6	11	9	4	10	9
	U.S. Fish and Wildlife Service	2	0	2	0	0.5	0	0	<1	<1
	Department of Defense	0	0	0	0	0.5	0	0	<1	<1

According to this predicted range model (USGS 2011), Tribal and private lands support the largest percentage of the Gunnison's prairie dog's (*Cynomys gunnisoni's*) predicted range at the species level, with 36 percent and 27 percent respectively (Table 1). The Bureau of Land Management (BLM) manages approximately 16 percent of this predicted range, the U.S. Forest Service (USFS) manages approximately 9 percent, the National Park Service (NPS) manages approximately 1 percent, and the U.S. Department of Defense and the Service both manage less than 1 percent of the Gunnison's prairie dog's predicted range (Table 1). The States manage approximately 9 percent of the Gunnison's prairie dog's predicted range. These percentages differ from the percentages reported in our last status review (February 5, 2008; 73 FR 6664) after we recalculated using the revised overall ranges for the subspecies, a different predicted range model (USGS 2011), and current landownership layers (BLM 2011; BLM 2012a; BLM 2012b; BLM 2013).

According to the predicted range model (USGS 2011), the largest percentage of *Cynomys gunnisoni gunnisoni's* predicted range occurs on private lands (50 percent) followed by lands managed by the BLM with 32 percent (Table 1). The USFS, the States, the Service, the NPS, and Tribes each manage less than 10 percent of *C. g. gunnisoni's* predicted range. Tribes manage the largest percentage of *C. g. zuniensis's* predicted range (40 percent), followed by private lands (25 percent) and the BLM (14 percent).

Native American Tribes manage the largest percentage (36 percent) of the Gunnison's prairie dog's predicted range (Table 1). The Navajo Nation in Utah, Arizona, and New Mexico manages approximately 64 percent of the Tribal lands within the overall range of the Gunnison's prairie dog (*Cynomys gunnisoni*) (Johnson *et al.* 2010, p. 8). The Hopi Tribe in Arizona manages 9 percent of the Tribal lands, while 4 percent are jointly managed by the Navajo Nation and Hopi Tribe (Johnson *et al.* 2010, p. 8). The Gunnison's prairie dog also occurs on Hualapai Tribe lands in Arizona.

Estimating the abundance of prairie dogs, or the number of individuals in a population, is notoriously difficult (Fitzgerald *et al.* 2011, p. 137). Densities of individuals range widely, with anywhere from 2 to 23 Gunnison's prairie dogs per ac (5 to 57 per ha) (Fitzgerald *et al.* 2011, p. 140). Additionally, the quality of habitats, season, colony age, precipitation, amount and quality of forage, predation, disease, poisoning, shooting, and other factors influence the number of prairie dogs present at a particular location (Knowles 2002, pp. 7–8). Prairie dogs also spend time in underground burrows, making them difficult to count. As a result, counting individual prairie dogs to estimate the population size is difficult, time-consuming, and only feasible for small areas (Biggins *et al.* 2006, p. 94).

Instead of counting individual prairie dogs, most abundance estimates are expressed as the area (acres (ac) or hectares (ha)) of occupied habitat (Biggins *et al.* 2006, p. 94). Occupied area estimates are derived by mapping the boundaries of colonies. Although easier and more efficient than counting individuals, mapping is also time-consuming, costly, and often inaccurate. Ground or aerial mapping of colonies over a predicted habitat range of 23 million ac (9.5 million ha) in 4 States would be required to develop a rangewide estimate of the area occupied by the Gunnison's prairie dog (Seglund *et al.* 2005, pp. 17–19). Mapping colonies across this large area is expensive and logistically unfeasible. Additionally, colony boundaries are often difficult to discern, whether on the ground or in the air, and the variability in distribution and activity levels of individuals makes mapping difficult and subjective (CDOW 2007, p. 18; WAFWA 2012, p. 1). Mapping may also overestimate the area of occupied habitats by including inactive burrows, which are especially difficult to identify or distinguish from active burrows by air or with remote imagery (Seglund *et al.* 2005, pp. 23–24; Johnson *et al.* 2006, p. 3; Seglund *et al.* 2006, pp. 15, 25; CDOW 2007, p. 18; Seglund 2012, p. 1). Mapping accuracy suffers over the longer time intervals necessary to visit large range portions, because colony area, location, and persistence on the landscape often change relatively quickly (Wagner *et al.* 2006, p. 335).

Occupancy modeling is a newer technique that improves the accuracy of abundance estimates and the evaluation of population trends for the Gunnison's prairie dog. Occupancy provides a powerful way to estimate abundance (Nicholson and Van Maner 2009, p. 233). An occupancy model estimates the percent of habitats that are occupied across a certain area and is a useful surrogate for estimating abundance (MacKenzie and Nichols 2004, pp. 461–466). Occupancy models detect changes over time in the proportion of habitats occupied by a species, which correlates to changes in population size (MacKenzie 2005, p. 849).

For Gunnison's prairie dogs, surveys are used to develop an occupancy model by recording the presence or absence of prairie dogs within a sub-set of random plots distributed throughout the current and historic range of the subspecies. On a scale of 1 to 100, the model represents the percentage of surveyed plots occupied by the Gunnison's prairie dog. The percentage of random plots occupied across the predicted range builds the model, which extrapolates to a rangewide estimate of occupancy (MacKenzie *et al.* 2002, pp. 2248–2249; MacKenzie *et al.* 2003, pp. 2200–2201). Changes in occupancy over time result from local extinction and colonization (Nicholson and Van Mayer 2005, p. 233). Therefore, occupancy trends also provide insight into metapopulation structure (MacKenzie 2005, p. 849).

Unlike counts of individuals or acreage estimates, occupancy models are statistically derived, are more objective, and can be implemented across large areas in a single season (Andelt *et al.* 2006, pp. 1–2; CDOW 2007, pp. 18–19; WAFWA 2007, p. 4; CPW 2010, p. 27; WAFWA 2012, p. 2). Occupancy models provide statistically derived trends over time (Seglund 2012, p. 2), and subsampling random plots for only presence-absence data improves efficiency and consistency when collecting data. Furthermore, the results of individual surveys can be interpreted separately to assess prairie dog occupancy and document trends within specific areas of concern. Occupancy modeling is well-established in the literature and deemed adequate and reliable for the long-term monitoring of the Gunnison's prairie dog throughout its range (Seglund and Schnurr 2010, p. 10; USGS 2011, p. 20). Since 2005, all four States within the range of the Gunnison's prairie dog have adopted this approach and have successfully completed at least 2 years of occupancy surveys (Seglund 2012, p. 2).

Unfortunately, occupancy modeling estimates are not directly comparable to estimates of occupied acres (including most historical estimates), because acreages are not recorded during the occupancy modeling surveys. When surveyors visit a random plot, observers record only presence or absence of Gunnison's prairie dogs, not the acres occupied. Without mapping, occupancy modeling provides no information about colony size or location within each random plot surveyed, and therefore cannot be directly correlated to previous approximations of occupied acres (USGS 2011, p. 17). However, the occupancy surveys and models are the best available information regarding the

Gunnison's prairie dog's current population status and trends.

Below we briefly summarize the historical and current abundance data available for the Gunnison's prairie dog, extrapolating to the subspecies where possible.

Historical Estimates of Abundance

Federal records from early poisoning campaigns provide historical estimates of Gunnison's prairie dog occupied habitat in Arizona and New Mexico. In 1916, approximately 6.6 million ac (2.7 million ha) of Gunnison's prairie dog occupied habitat occurred in Arizona (*Cynomys gunnisoni zuniensis*), and 11 million ac (4.4 million ha) occurred in New Mexico (*C. g. zuniensis* and *C. g. gunnisoni*) (Oakes 2000, pp. 169–171). In our 90-day finding in 2006 (71 FR 6241; February 7, 2006), we calculated historical estimates (circa 1916) for Colorado (6 million ac (2.4 million ha), both subspecies) and Utah (700,000 ac (284,000 ha), *C. g. zuniensis*) from prairie dog information in various publications and reports, because data were not available for these States. By summation, based on the best available information, we estimated that the Gunnison's prairie dog (including both subspecies) historically occupied approximately 24.3 million ac (9.8 million ha) across its range in 1916. This historical estimate is similar to the predicted range model's rangewide estimate of 23,459,525 ac (9,493,733 ha) for the species based on habitat characteristics (Seglund *et al.* 2006, p. 70).

In 1961, the Gunnison's prairie dog occupied an estimated 445,000 ac (180,000 ha) of habitat in Arizona; 116,000 ac (47,000 ha) in Colorado; 355,000 ac (144,000 ha) in New Mexico; and 100,000 ac (41,000 ha) in Utah (Bureau of Sport Fisheries and Wildlife 1961, pp. 1, 5). By summation, in 1961, the Gunnison's prairie dog (including both subspecies) occupied approximately 1 million ac (405,000 ha) rangewide. When compared, these estimates indicate that, from 1916 to 1961, Gunnison's prairie dog populations decreased by approximately 93 percent in Arizona, 98 percent in Colorado, 97 percent in New Mexico, and 86 percent in Utah, or by approximately 95 percent rangewide, largely because of disease and poisoning.

To summarize the historical abundance data, between 1916 and 1961, habitat occupied by the Gunnison's prairie dog throughout its range declined by 95 percent as a result of disease and poisoning. However, historical declines do not necessarily imply that current populations continue to decline.

After 1961, survey efforts documented declines, die-offs, or gradual increases in the acreage of occupied Gunnison's prairie dog habitats. Seglund *et al.* (2006, pp. 12–27) summarize the post-1961 surveys for each of the four States, and each State's conservation assessment provides additional summaries (Underwood 2007; Lupis *et al.* 2007; NMDGF 2008; Seglund and Schnurr 2010). We highlight several surveys for each State and Tribal lands below. However, because different survey methodologies were used, it is difficult to evaluate rangewide populations or assess trends from the post-1961 survey data. Additionally, surveys generally did not differentiate the Gunnison's prairie dog by subspecies; however, where possible, we have attempted to interpret data to the subspecies.

Arizona

In 1990, colony mapping of eight complexes identified 34,214 ac (13,846 ha) of active *Cynomys gunnisoni zuniensis* colonies (Seglund *et al.* 2006, p. 12). In the Aubrey Valley, the subspecies occupied 19,368 ac (7,838 ha) in 1990, and 29,655 ac (12,001 ha) in 1997, with burrow densities fluctuating yearly from 52 to 82 burrows per ac (21 to 33 burrows per ha) between 1996 and 2001 (Seglund *et al.* 2006, p. 13). Populations at the Aubrey Valley increased following mild winters with above average rainfall, with lower numbers during droughts (Seglund *et al.* 2006, p. 13). Surveys in 2000 and 2001 across the range of *C. g. zuniensis* in Arizona, not including the Aubrey Valley and Tribal lands, identified approximately 11,184 ac (4,526 ha) of active colonies; however, this represented a 66 percent reduction in acreage from surveys conducted in 1987 (Wagner and Drickamer 2003; Seglund *et al.* 2006, p. 14). Die-offs from plague resulted in this decline.

Colorado

In 1980, *Cynomys gunnisoni gunnisoni* occupied approximately 15,568 ac (6,300 ha) on BLM lands in Gunnison (Seglund *et al.* 2006, p. 19). In 1988, *C. g. gunnisoni* occupied approximately 640 ac (259 ha), or approximately 0.9 percent of the San Luis Valley of Colorado (Seglund *et al.* 2006, p. 17). In 1990, the Colorado Agricultural Statistics Service estimated 438,876 ac (177,607 ha) of Gunnison's prairie dog in Colorado; however, the survey methodology likely overestimated the actual acreage of occupied habitat (Knowles 2002; Seglund *et al.* 2006, p. 17). In 1990, there were 5,800 ac (2,347 ha) of occupied *C. g. gunnisoni* habitats in Gunnison County, Colorado, but populations potentially declined by 94 percent within 12 years (Capodice and Harrell 2003; Seglund *et al.* 2006, p. 19). In 2002, Colorado supported approximately 151,547 ac (61,329 ha) of active colonies (Seglund *et al.* 2006, p. 20). Plague was responsible for all observed declines and extirpations.

New Mexico

In 1971, New Mexico supported approximately 87,748 ac (35,510 ha) of occupied Gunnison's prairie dog habitat (Seglund *et al.* 2006, p. 21), which includes both *Cynomys gunnisoni gunnisoni* and *C. g. zuniensis.* Surveys of agricultural producers estimated 106,572 ac (43,128 ha) of occupied Gunnison's prairie dog colonies in New Mexico (Seglund *et al.* 2006, p. 22). The Estancia Valley had 43 active colonies in 1999 across 2,271 ac (919 ha), but only 27 were active a year later due to unknown causes (Seglund *et al.* 2006, p. 24). In 2004, surveys on BLM lands identified 2,378 ac (962 ha) of occupied habitat (Seglund *et al.* 2006, p. 24).

Utah

In 1968, Utah supported approximately 22,007 ac (8,906 ha) of occupied *Cynomys gunnisoni zuniensis* habitat (Seglund *et al.* 2006, p. 26). In 1984, *C. gunnisoni zuniensis* occupied 2,212 ac (895 ha) on BLM lands in San Juan County, Utah (Seglund *et al.* 2006, p. 26). Surveys in 2002 on public, non-Tribal lands in Grand and San Juan Counties, Utah, identified 3,687 ac (1,492 ha) of active colonies with high prairie dog densities (Seglund *et al.* 2006, p. 27).

Tribal Lands

Since 1961, only two surveys evaluated the Gunnison's prairie dog on Tribal lands of the Navajo Nation. In 1994 and 1996, 18 of 90 colonies totaled 5,987 ac (2,423 ha), with an additional, estimated area of more than 988 ac (400 ha) of active colonies that were not surveyed. The limited survey area represented only a small portion of potentially occupied prairie dog habitat on the Navajo Nation (Navajo Natural Heritage Program 1996). Limited surveys along a linear transect within the road right-of-way along a 69 mile stretch of highway on the Navajo Nation in New Mexico supported 37 prairie dog colonies in 2001, but these colonies were largely abandoned in 2003 (Seglund *et al.* 2006, p. 24).

Current Rangewide and Statewide Estimates of Abundance

In 2005, Colorado conducted occupancy surveys to assess the status of Gunnison's prairie dog populations throughout its historical and current range in the State. Following Colorado's effort, in 2007 and 2010, Colorado, Utah, Arizona, and New Mexico all conducted occupancy surveys to assess the status of Gunnison's prairie dog populations throughout its historical and current range. To date, three occupancy surveys spanning 6 years have been completed in Colorado, and two surveys spanning 3 years have been completed in Utah, Arizona, and New Mexico, mostly on public and non-Tribal lands. Because prairie dogs have up to one litter per year and live for 3 years, two surveys spanning 3 years account for up to three generations of Gunnison's prairie dog. Therefore, 2 years of surveys provides the best available assessment of current population trends.

The occupancy surveys and modeling reveal that the Gunnison's prairie dog occupied 20 percent of its potential habitat rangewide in 2010 (Seglund 2012, p. 11). This percentage represents the current status of the Gunnison's prairie dog across its range. It does not imply an 80 percent decline from historical levels, because different, incomparable methodologies were used, and the species is discontinuously distributed across its potential range. Furthermore, the surveys indicate that between 2005 and 2010, the occupancy remained stable in Colorado and stable between 2007 and 2010 in Colorado, New Mexico, Utah, and Arizona. Occupancy for individual population areas in Colorado and New Mexico also remained stable between survey years. A rangewide occupancy of 20 percent likely reflects the Gunnison's prairie dog's colonial and discontinuous distribution across its predicted range. Colonial behavior and a naturally discontinuous distribution would prevent the species from ever achieving full, 100 percent occupancy across its predicted range.

Stable occupancy trends indicate that populations of both Gunnison's prairie dog subspecies are also stable and not declining. The stable trends indicate that the Gunnison's prairie dog has exhibited sufficient resiliency to recover from periodic disturbance, such as poisoning, shooting, or plague. Due to this stability, the States delayed the next occupancy surveys to 2016, rather than 2013 (Van Pelt 2013, p. 5). Declines in occupancy of within any one individual population area will trigger rangewide conservation actions, including increased funding, personnel support, and annual occupancy surveys until the decline reverses (WAFWA 2007, p. 5; Seglund 2012, p. 13).

Below, we briefly summarize the available abundance data from each State and Tribe.

Arizona

Only *Cynomys gunnisoni zuniensis* occurs in Arizona. In 2007, this subspecies occupied approximately 108,570 ac (40,500 ha) on non-Tribal lands in Arizona (Underwood 2007, p. 30), which is a gross underestimate because it did not include Tribal lands in Arizona, which occupy more than 50 percent of the Statewide potential habitat (Table 1). Between 2007 and 2011, these occupied acres in Arizona increased by approximately 1 percent from 108,570 (40,500 ha) ac to 109,402 ac (44,273 ha) (Van Pelt 2012, p. 5). Lands managed by the Navajo Nation and Hopi Tribe in Arizona supported approximately 111,108 ac (44,965 ha) of active colonies in 2008 (Johnson *et al.* 2010; Johnson 2013, p. 1).

At the Espee Ranch black-footed ferret reintroduction site in Arizona, occupied acres of *Cynomys gunnisoni zuniensis* dropped by 85 percent between 2009 and 2010, from 8,000 ac (3,237 ha) to 1,200 ac (486 ha) due to plague (Van Pelt 2011, p. 4). However, in 2011, the occupied acres increased by 90 percent, with an approximate total of 5,738 ac (2,322 ha) at the Espee Ranch (Van Pelt 2011, p. 4). Between 2011 and 2012, the Espee Ranch population again increased, by 65 percent, from 5,738 ac (2,322 ha) to 9,514 ac (3,850 ha) (Van Pelt 2013, p. 6). The population rebound at the Espee Ranch illustrates the resiliency of the Gunnison's prairie dog to catastrophic events, including reoccurring outbreaks of plague.

In 2012, *Cynomys gunnisoni zuniensis* occupied approximately 54,047 ac (21,872 ha) in the Aubrey Valley complex (Van Pelt 2013, p. 6). Annual monitoring at the Aubrey Valley complex reveals that populations are increasing and may have some genetically-based resistance to sylvatic plague (Van Pelt 2013, p. 11). Overall, the acreage of habitat occupied by *Cynomys gunnisoni zuniensis* in Arizona has increased from the 1961 levels.

In 2007, occupancy surveys in Arizona's three population areas ranged from 11 to 36 percent (Seglund 2013, p. 1). In 2010, occupancy surveys in Arizona's three population areas ranged from 14 to 37 percent. Between 2007 and 2010, occupancy of *Cynomys gunnisoni zuniensis* was stable. Therefore, populations were also stable in Arizona, which also suggests that the metapopulation structure is intact.

Colorado

In 1990, Gunnison's, white-tailed, and black-tailed prairie dogs occupied an estimated 1,553,000 ac (621,200 ha) in Colorado (CDA 1990, p. A–3). Based on species occurrence by county, Gunnison's prairie dogs occupied approximately 438,876 ac (177,607 ha) in Colorado in 1990 (Seglund *et al.* 2005, p. 26).

Between 2002 and 2005, the Colorado Parks and Wildlife (CPW) mapped approximately: 182,237 ac (72,895 ha) of active Gunnison's prairie dog colonies; 9,042 ac (3,617 ha) of inactive colonies; and 171,970 ac (68,788 ha) of colonies in unknown status within Colorado (CDOW 2007, p. 3). These abundance estimates suggest a 36 percent increase in abundance from the historical 1961 estimate of 115,650 ac (46,802 ha), although errors associated with mapping likely reduced the accuracy of these estimates.

CPW selected individual population areas within Colorado to focus their management efforts. In Colorado, *Cynomys gunnisoni gunnisoni* occupy the Gunnison, San Luis Valley, South Park, and Southeast population areas. *Cynomys gunnisoni zuniensis* occupy the La Plata–Archuleta and Southwest population areas. *C. g. gunnisoni* occupy approximately 80 percent of the potential habitat and 40 percent of the occupied habitat in Colorado (CDOW 2007, p. 28). *C. g. zuniensis* occupy approximately 20 percent of the potential habitat and about 60 percent of the occupied habitat in Colorado (CDOW 2007, pp. 3, 19). In other words, there is more potential habitat for *C. g. gunnisoni* in Colorado, but this subspecies occupies only 40 percent of the total occupied habitat. Comparatively, there is less potential habitat in Colorado available to *C. g. zuniensis,* but the subspecies occupies 60 percent of the total occupied Gunnison's prairie dog habitat in Colorado. This indicates that *C. g. zuniensis* is more abundant in Colorado than *C. g. gunnisoni.*

Occupancy surveys confirmed that *Cynomys gunnisoni zuniensis* is more abundant than *C. g. gunnisoni* in Colorado. In 2005, *C. g. gunnisoni* occupied 4.5 percent and *C. g. zuniensis* occupied 17.3 percent of the potential habitats in Colorado (Seglund 2013, p. 1). In 2007, *C. g. gunnisoni* occupied 5.5 percent and *C. g. zuniensis* occupied 18.4 percent of its potential habitats (Seglund 2013, p. 1). In 2010, C. *g. gunnisoni* occupied approximately 8.2

percent of the potential habitats in Colorado and *C. g. zuniensis* occupied approximately 14.2 percent of the potential habitats (Seglund 2013, p. 1). These percentages provide both subspecies with sufficient redundancy to rebound and repopulate following declines from catastrophic events, such as plague outbreaks. Additionally, between 2005 and 2010, occupancy rates for both subspecies were stable in all the individual population areas of Colorado (Seglund 2012, pp. 2, 11; Seglund 2013, p. 1). Stability between the individual population areas suggests that the metapopulation structure is intact in Colorado, as extirpated colonies are successfully recolonized. The data also indicate that both subspecies have demonstrated resiliency to plague, the primary factor impacting populations.

It remains unclear why *C. g. gunnisoni* occupies a smaller percentage of its potential habitats than *C. g. zuniensis* in Colorado, although this percentage provides sufficient population redundancy for *C. g. gunnisoni* to rebound and repopulate following catastrophic events. Disease and poisoning may have initially contributed to this discrepancy, but both subspecies are resilient to periodic disturbance from these impacts. The difference may have more to do with habitat productivity. Although *C. g. gunnisoni'*s habitats are generally moister, growing seasons are shorter at higher elevations, which may reduce the annual productivity of forage available to *C. g. gunnisoni* in Colorado.

New Mexico

Both *Cynomys gunnisoni gunnisoni* and *C. g. zuniensis* occur in New Mexico. *C. g. gunnisoni* occupies approximately 17 percent of the potential Gunnison's prairie dog habitat in New Mexico, while *C. g. zuniensis* occupies approximately 83 percent of the potential habitat. However, historical and current estimates of abundance in New Mexico do not differentiate between the two subspecies, so percentages of habitat occupied by each subspecies are not available. Therefore, the data do not reveal whether one subspecies is more or less abundant.

Estimates of habitat occupied by the Gunnison's prairie dog in New Mexico during the early 1980s range widely, from approximately 348,000 ac (141,000 ha) to 75,000 ac (30,000 ha) (Bodenchuck 1981, p. 8; Oakes 2000, p. 216; Knowles 2002, p. 22). In 2004, aerial mapping estimated a minimum of 9,108 ac (3,689 ha) of habitat occupied by the Gunnison's prairie dog in New Mexico (Seglund *et al.*2006, p. 24). On its lands in New Mexico, the Navajo Nation supported approximately 134,210 ac (54,314 ha) of active colonies in 2008 (Johnson *et al.* 2010; Johnson 2013, p. 1).

Occupancy in 2010 for the entire species was 18.1 percent (Seglund 2010, p. 11). Between 2007 and 2010, occupancy was stable, suggesting that populations were also stable. Occupancy surveys in New Mexico did not differentiate between *Cynomys gunnisoni gunnisoni* in the northeast and *C. g. zuniensis* in the southwest part of the State. However, there is no information to indicate that abundance should differ significantly between the two subspecies in New Mexico.

Utah

Only *Cynomys gunnisoni zuniensis* occurs in Utah; however surveys have been relatively limited compared to the other States. In 1968, Utah supported approximately 22,000 ac (8,906 ha) of occupied Gunnison's prairie dog (*Cynomys gunnisoni zuniensis*) habitat (Seglund *et al.* 2006, p. 26). In 2002, Gunnison's prairie dogs occupied at least 3,678 ac (1,490 ha) in Utah (Knowles 2002, p. 21), although this was not a Statewide estimate. Occupied habitat may have decreased by 60 percent between 1961 and 2007, from 100,000 ac (40,500 ha) in 1961 (Bureau of Sport Fisheries and Wildlife 1961, p. 5), to 40,000 ac (16,000 ha) in 2007 (Lupis *et al.* 2007, p. 3); however, these data suffer from differing survey techniques. In 2008, the Navajo Nation in Utah supported approximately 3,334 ac (8,238 ha) of active *Cynomys gunnisoni zuniensis* colonies (Johnson *et al.* 2010; Johnson 2013, p. 1). The best available information indicates that *C. g. zuniensis* populations fluctuated over time in Utah.

The Gunnison's prairie dog occupancy in Utah was estimated to be 14.5 percent in 2007, and 15.1 percent in 2010 (Wright 2007, p. 3; Lupis *et al.* 2007, pp. 24, 60; Seglund 2012, p. 11). Occupancy surveys in 2008 revealed similar occupancy percentages on Tribal lands managed by the Navajo Nation (Seglund 2012, p. 8). Stable occupancy percentages indicate that populations of *Cynomys gunnisoni zuniensis* were stable in Utah.

Tribal Lands

In 2010, the Navajo Nation in Arizona, New Mexico, and Utah, and the Reservation of the Hopi Tribe in Arizona, supported approximately 253,567 ac (102,615 ha) of active Gunnison's prairie dog (*Cynomys gunnisoni zuniensis*) colonies spread throughout the land holdings of both Tribes (Johnson *et al.* 2010, p. 21). In Arizona, the Navajo Nation and Hopi Tribe in Arizona supported approximately 111,108 ac (44,965 ha) of active colonies in 2008 (Johnson *et al.* 2010; Johnson 2013, p. 1). In Utah, the Navajo Nation supported approximately 3,334 ac (8,238 ha) of active *Cynomys gunnisoni zuniensis* colonies (Johnson *et al.* 2010; Johnson 2013, p. 1). On its lands in New Mexico, the Navajo Nation supported approximately 134,210 ac (54,314 ha) of active colonies in 2008 (Johnson *et al.* 2010; Johnson 2013, p. 1).

CPW completed occupancy modeling for *Cynomys gunnisoni zuniensis* on the Southern Ute and Ute Mountain Indian Reservation in the southwest corner of Colorado (Seglund 2012, p. 6). Occupancy was 26.5 percent in 2010, with stability between 2007 and 2010. Occupancy surveys in Utah revealed similar occupancy percentages on Tribal lands managed by the Navajo Nation (Seglund 2012, p. 8). Although occupancy surveys for the Gunnison's prairie dog have not been completed on other Tribal lands, there is no information to indicate that occupancy percentages or trends differ.

Summary of Abundance and Trends

Historical estimates of abundance indicate a rangewide 95 percent decline in the acres occupied by the Gunnison's prairie dog between 1916 and 1961. Declines occurred within all four States, and populations fluctuated after 1961. However, the best available information indicates that population numbers have been stable since that time, especially as prairie dog eradication efforts decreased in magnitude. Current occupancy modeling indicates that the Gunnison's prairie dog occupies 20 percent of its available habitat, which provides sufficient redundancy of populations for continued stability. This percent occupancy represents the current status of the Gunnison's prairie dog across its range and does not represent an 80 percent decline. Furthermore, occupancy surveys and modeling completed throughout the ranges of both subspecies revealed that Gunnison's prairie dog occupancy, and hence populations, were stable throughout the ranges of both subspecies between 2007 and 2010 in Arizona, New Mexico, and Utah, and between 2005 and 2010 in Colorado. This stability rangewide and within individual population areas also suggests that any local extinctions are offset by recolonization, so the metapopulation structure is intact.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this finding, information pertaining to the Gunnison's prairie dog, and the subspecies *Cynomys gunnisoni gunnisoni* and *C. g. zuniensis,* in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. When considering what factors might constitute threats, we must look beyond the mere exposure of the species (or in this case, subspecies) to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of an endangered or threatened species under the Act.

In making our 12-month finding on the petition, we considered and evaluated the best scientific and commercial information available.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Below, we examine the following potential factors that may affect the habitat or range of *Cynomys gunnisoni gunnisoni* or *C. g. zuniensis* including: (1) Agricultural land conversion; (2) grazing; (3) invasive plant species; (4) urbanization; and (5) oil and gas exploration and development.

Agricultural Land Conversion

Agricultural land conversion describes a change in land use to an agricultural use, such as crops or pastures. Agricultural land conversion historically impacted Gunnison's prairie dog habitat by displacing Gunnison's prairie dogs from some of the more productive valley bottomlands in Colorado and New Mexico (Longhurst 1944, p. 36; Knowles 2002, p. 12). Agricultural land conversions may also increase mortality rates of prairie dogs when control efforts, such as poisoning and shooting, accompany the change in land use (Hoogland 2001, p. 917; Knowles 2002, p. 12).

Today, agriculture currently impacts 2,063,930 ac (834,243 ha), or less than 3 percent of the Gunnison's prairie dog's range (Seglund *et al.* 2005, p. 43). In Arizona, agricultural development impacts 31,444 ac (12,725 ha), or less than 1 percent of the predicted range of *Cynomys gunnisoni zuniensis* (Underwood 2007, pp. 9–10). Between 2002 and 2007, acres of farmland in Colorado increased by 1.6 percent, but decreased by 3.5 percent in New Mexico, 5.4 percent in Utah, and 1.8 percent in Arizona (USDA 2009). Gunnison's prairie dogs may benefit from agricultural land conversions because agricultural fields provide highly productive forage for Gunnison's prairie dogs, in place of the native, arid landscape (Crocker-Bedford 1976, pp. 73–74; Seglund *et al.* 2005, p. 41). Further, control efforts that may accompany agriculture currently occur locally and do not result in rangewide population declines of either subspecies (see discussions of Factors C and E).

Therefore, due to the small percentage of the range affected by agriculture and the small amount of land likely to be converted to agriculture in the future, agricultural land conversion is not a threat to either subspecies now nor is it likely to become so in the future.

Livestock Grazing

Prairie dogs coevolved with native herbivores, such as bison (*Bison bison*), that grazed across the intermountain west before European settlers introduced domesticated livestock in the 1800s. By 1890, hundreds of thousands of cattle and large numbers of sheep grazed within the range of the Gunnison's prairie dog (Seglund *et al.* 2006, p. 33). Livestock numbers peaked in the early 1900s (Oliphant 1968, p. vii; Young *et al.* 1976, pp. 194–195; Carpenter 1981, p. 106; Donahue 1999, p. 15). However, the intensity of grazing on Federal lands has declined since the early 1900s (Laycock *et al.* 1996, p. 3). Between 2000 and 2012, numbers of cattle, including calves, decreased by 13 percent in Colorado, decreased by 15 percent in New Mexico, decreased by 12 percent in Utah, and increased by 9.5 percent in Arizona (National Agricultural Statistics Service 2013).

In general, livestock grazing can alter the diversity of plants and disrupt the function and structure of ecosystems by decreasing cover by grasses and shrubs, total plant biomass, and the diversity and richness of rodents (Fleischner 1994, pp. 633–635; Seglund *et al.* 2006, p. 33). Fencing and roads associated with livestock grazing may fragment habitats, kill prairie dogs crossing roads, create perches for raptors, and provide access corridors for predators (Call and Maser 1985, p. 3; Connelly *et al.* 2000, p. 974; Connelly *et al.* 2004, pp. 1–2). Overgrazing occurs when the forage plants are unable to recover (Vallentine 1990, p. 329). Overgrazing may reduce the forage available to prairie dogs and may promote the establishment of invasive species, such as cheat grass (*Bromus tectorum*) (Masters and Sheley 2001, p. 503). The intensity, duration, and distribution of livestock grazing influence the condition of rangeland more than the density of livestock (Aldridge *et al.* 2008, p. 990).

Non-grazed habitats within the range of the Gunnison's prairie dog are rare, so evaluating potential impacts of livestock grazing on prairie dog habitats and populations is difficult (Seglund *et al.* 2006, p. 33). Overgrazing may impact prairie dogs by degrading the quality, quantity, and diversity of forage, and by decreasing forage availability during important breeding, rearing, and pre-hibernation periods (Seglund *et al.* 2006, p. 34). Altered hydrology, compacted soils, altered nutrient cycling, and decreased water infiltration resulting from overgrazing may also impact Gunnison's prairie dog habitats (Seglund *et al.* 2006, p. 34).

When properly managed, livestock grazing may be beneficial to the Gunnison's prairie dog. Grazing benefited black-tailed prairie dog colonies by reducing the height of grasses, which improves visibility to detect predators (Uresk *et al.* 1981, p.

200; Cable and Timm 1987, p. 46). Well managed grazing also increases production of the prairie dog's preferred grass species (Seglund *et al.* 2006, p. 34), and prairie dog densities increase in grazed habitats, likely because well-managed grazing is compatible with the shortgrass prairie environment preferred by prairie dogs (Fagerstone and Ramey 1996, p. 88; Marsh 1984, p. 203; Slobodchikoff *et al.* 1988, p. 406). Prairie dogs and native herbivores coexisted before the arrival of domesticated livestock, so prairie dogs should be able to coexist with livestock that are properly grazed (Hoogland 1996, p. 6; Underwood 2007, p. 8). In Arizona, some of the largest and recently expanding *Cynomys gunnisoni zuniensis* colonies are actively grazed (Underwood 2007, p. 10).

However, improperly managed grazing, or overgrazing, may reduce the forage available to the Gunnison's prairie dog. For example, Utah prairie dog densities declined in overgrazed habitats (Collier and Spillett 1975 p. 151; Cheng and Ritchie 2006, p. 550). As overgrazing reduced the diversity of plants, more Utah prairie dog colonies went extinct (Ritchie 1999, p. 12) and unfavorable shrub densities increased (Crocker-Bedford 1976, p. 88). At the same time, Utah prairie dogs preferred moderately grazed areas to ungrazed areas due to the availability of short grasses (Cheng and Ritchie 2006, p. 554). Therefore, overgrazing may negatively impact the Gunnison's prairie dog, but properly managed grazing may benefit the Gunnison's prairie by increasing visibility and the quality and quantity of preferred forage (Seglund *et al.* 2006, p. 34).

We lack information regarding site-specific range conditions on Federal or non-Federal grazing allotments within the range of *Cynomys gunnisoni gunnisoni* or *C. g. zuniensis.* Range condition data are not collected in a biologically meaningful way that is relevant to small mammals. Gunnison's prairie dogs evolved with other herbivores in arid environments and can persist with limited forage. Prairie dogs hibernate and aestivate (sleep during the summer) when they are metabolically stressed (Harlow and Menkens 1986, p. 795; Seglund *et al.* 2006, p. 7; Seglund and Schnurr 2010, p. 14), an adaptation which may allow the Gunnison's prairie dog to persist within overgrazed habitats. The point at which overgrazing makes habitats unsuitable is unclear, so quantifying the habitats that are overgrazed versus moderately grazed, and the impacts on prairie dogs, is difficult. The available literature indicates that prairie dogs can coexist with some level of properly managed grazing, and may benefit from well managed grazing in some cases (Uresk *et al.* 1981, p. 200; Marsh 1984, p. 203; Cable and Timm 1987, p. 46; Slobodchikoff *et al.* 1988, p. 406; Fagerstone and Ramey 1996, p. 88; Hoogland 1996, p. 6; Seglund *et al.* 2006, p. 34; Cheng and Ritchie 2006, p. 554; Underwood 2007, pp. 8, 10). Gunnison's prairie dogs have persisted under more intense grazing in the past, and stocking rates have decreased across most of the range, and increased slightly only in Utah. Therefore, grazing is not a threat to either subspecies now nor is it likely to become so in the future.

Invasive Plant Species

The alteration of native prairie habitats throughout the western United States by the invasion of noxious weeds, such as cheat grass (*Bromus tectorum*) is well documented in the literature (Mack 1981, pp. 145–165; D'Antonio and Vitousek 1992, pp. 63–87; Knapp 1996, pp. 37–52; Young and Allen 1997, pp. 530–535; Stohlgren *et al.* 1999, pp. 45–64; Pimental *et al.* 2005, pp. 273–288; Davies and Sheley 2007, p. 178; DiTomaso 2009, pp. 255–265). Invasive plant species displace native plants, degrade wildlife habitats, alter fire regimes, and promote continued invasions (Masters and Sheley 2001, p. 503). The continued expansion of juniper forests into semi-arid grasslands and shrublands may reduce native prairie habitats (Miller and Rose 1999, p. 550) and restrict or fragment Gunnison's prairie dog habitats (Seglund and Schnurr 2010, p. 159).

Prairie dog densities increase when there are more native plants (Slobodichikoff *et al.* 1988, p. 406), and invasive plants may reduce densities by reducing the quality and quantity of the Gunnison's prairie dog's preferred forage. Although noxious weeds are now widespread throughout the range of the Gunnison's prairie dog, there is no evidence that the subspecies are impacted by invasive plant species at more than a localized scale. Additionally, although juniper encroachment may reduce available habitats, the available information indicates that juniper encroachment occurs at no more than a localized scale at the periphery of the overall range. Therefore, invasive plant species are not threats to either subspecies of Gunnison's prairie dog now nor are they likely to become so in the future.

Urbanization

Urban development reduces and fragments habitats. More infrastructure, such as roads and transmission lines, accompany expansions of human population centers, which may impact habitats beyond the immediate urban area. Prairie dog control efforts, such as shooting and poisoning, may also be more prevalent next to urban areas (Seglund and Schnurr 2010, p. 171). Impacts to the Gunnison's prairie dog associated with urban and suburban development exist, but have not been quantified, in the five cities of Santa Fe and Albuquerque, New Mexico; Flagstaff, Arizona; and Gunnison and Durango, Colorado (CDOW 2007, p. 4).

The effects of urban development on the Gunnison's prairie dog have not been specifically studied, but the weights and sex ratios of black-tailed prairie dogs living in urban environments were within the normal ranges for the species (Magle 2008, p. 116). However, within urban areas, black-tailed prairie dogs were more likely to occur on larger, continuous habitats, rather than smaller, highly fragmented urban parcels (Magle and Crooks 2009, p. 197). Existing black-tailed prairie dog colonies collapsed within highly fragmented urban environments (Magle and Crooks 2009, pp. 197, 199). In other words, black-tailed prairie dogs survived in habitats fragmented by urban areas, but populations decreased over time as habitats became more fragmented (Magle and Crooks 2009, p. 200). We expect that the impacts of urban development on Gunnison's prairie dogs would be similar.

Today, urbanization affects approximately 577,438 ac (233,681 ha), or less than 2 percent, of the predicted range of the Gunnison's prairie dog (Seglund *et al.* 2005, p. 41; Seglund *et al.* 2006, p. 35). In Arizona, urban development impacts 42,371 ac (17,147 ha), or less than 1 percent of the predicted range for *Cynomys gunnisoni zuniensis* (Underwood 2007, p. 10). During surveys in Arizona, only one *C. g. zuniensis* colony became inactive due to urbanization (Wagner *et al.* 2006, p. 334). Rates of urbanization with the western United States are below the national average (White *et al.* 2009, pp. 41–45). Low-density developments may actually be compatible with Gunnison's prairie dog populations where lawns and pastures provide high quality forage (Seglund *et al.* 2005, p. 41; Seglund *et al.* 2006, p. 35). Secondary effects of urbanization, such as shooting and poisoning, occur locally but do not significantly reduce rangewide populations. Near Santa Fe, New Mexico, Gunnison's prairie dogs are relocated to preserves before lands are urbanized, although this does not reduce the loss of habitat. Urbanization is projected to occur rapidly on Colorado's western slope, and high density urban development may impact a larger percentage of the *Cynomys gunnisoni zuniensis'* range in western Colorado. However, urbanization is a concern only at localized scales primarily near the urban areas of Durango and Montrose (Seglund and Schnurr 2010, pp. 171, 176), and there is no evidence that urbanization negatively impacts *C. g. zuniensis* populations near these cities.

To summarize, habitat loss and fragmentation due to urbanization may impact both subspecies of the Gunnison's prairie dog, but only in localized areas. There will not likely be significant increases in urbanization across the subspecies' ranges in the future. Therefore, urbanization is not a threat to either subspecies now or likely to become so in the future.

Oil and Gas Exploration and Development

Oil and gas exploration and development occur throughout the ranges of both Gunnison's prairie dog subspecies. Between 2004 and 2008, political and economic incentives increased the exploration of oil and gas resources in the intermountain west. The 2005 Energy Policy Act expedited the leasing and permitting of energy development on Federal lands (42 U.S.C. 13201 *et seq.;* Seglund and Schnurr 2010, p. 121). Although the global recession of 2008 decreased energy demand and reduced the rate of development, demand will likely increase (Copeland *et al.* 2009, p. 1; EIA 2009, p. 109).

Exploration for oil and gas may increase human activity within previously undisturbed habitats and introduce other disturbances, such as seismic waves, which may collapse burrows, impair hearing, and disrupt social systems (Underwood 2007, p. 10). The development of well pads and supporting infrastructure, such as roads and pipelines, may reduce or fragment available habitats (Seglund and Schnurr 2010, p. 126). Prairie dog control, such as shooting or poisoning, and road mortality, may accompany the oil and gas developments (Gordon *et al.* 2003, p. 12).

Approximately 6 percent of the Gunnison's prairie dog's range is under authorized or pending Federal lease for oil and gas development (Seglund and Schnurr 2010, p. 117). We lack similar estimates for development on private lands. However, the available information does not indicate that Gunnison's prairie dogs are negatively impacted by oil and gas activities at the population, subspecies, or landscape levels. Increased mortality associated with control efforts or roads are similarly localized and do not result in widespread population reductions or losses, as evidenced by the stable occupancy trends. Furthermore, seismic exploration does not likely negatively affect prairie dogs (Menkens and Anderson 1985, p. 13). Therefore, oil and gas exploration and development are not threats to either subspecies of Gunnison's prairie dog now or likely to become so in the future.

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range

Current approved or draft resource management plans (RMPs) for BLM lands in Utah and New Mexico include specific conservation measures to avoid and minimize impacts to the Gunnison's prairie dog from oil and gas activities (as discussed below under *Factor D*). RMPs in Colorado and Arizona do not specifically address the Gunnison's prairie dog. Conservation measures include precluding oil and gas development and other surface-disturbing activities within 600 feet (183 meters) of active colonies and limiting the construction of power lines within colonies (BLM 2008a, pp. 138–139; BLM 2008b, pp. 122–123; BLM 2012, p. 2–125; BLM 2013, pp. 19, 143). The BLM's RMPs confer conservation recommendations for the management of prairie dogs on BLM lands.

Summary of Factor A

Agriculture, grazing, the spread of invasive plants, urbanization, and oil and gas exploration and development occur within the ranges of *Cynomys gunnisoni gunnisoni* and *C. g. zuniensis* and will continue to occur in the future. Agriculture and urbanization currently impact a small portion of the Gunnison's prairie dog's range. Urbanization may impact local populations, but it is not a rangewide threat. Grazing and oil and gas development likely impact some habitats, but there is no evidence that they are significantly impacting either subspecies. Additionally, there is no evidence that invasive plants are having a significant impact.

Therefore, the best scientific and commercial information available indicates that the present or threatened destruction, modification, or curtailment of its habitat or range is not currently a threat to *Cynomys gunnisoni gunnisoni* or *C. g. zuniensis,* nor is it likely to become so in the future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Recreational Shooting

Gunnison's prairie dogs have been historically subjected to recreational shooting and shooting as a form of pest management on ranch and agricultural lands. State regulations in all four States allow shooting of Gunnison's prairie dogs.

Colonial behavior makes prairie dogs vulnerable to shooting by providing shooters with easy access to many individuals at once (Seglund *et al.* 2005, p. 48). There is little information regarding shooting specific to the Gunnison's prairie dog (Seglund 2006, p. 41), but the effects of shooting on black-tailed prairie dogs are well documented and relevant to the Gunnison's prairie dog (CDOW 2007, p. 41; Seglund and Schnurr 2010, p. 165). Shooting reduces prairie dog populations and alters behaviors of individual animals. The prairie dogs eat less and spend more time alert, which reduces the vigor of individual prairie dogs and the reproductive output of the colony (Knowles 1988, p. 54; Vosburgh 1996, pp. 32–33; Vosburgh and Irby 1998, p. 368; Pauli and Buskirk 2007, pp. 1223–1224). At specific sites, shooting can reduce prairie dog populations (Miller *et al.* 1993, p. 91; Vosburgh 1996, pp. 13–14; Vosburgh and Irby 1998, pp. 366–367; Knowles 2002, p. 14), and shooting may have locally extirpated colonies in isolated circumstances in the past (Knowles 1988, p. 54).

However, increased population growth rates or recovery from very low numbers following shooting have occurred (Knowles 1988, p. 54). Even small numbers of Gunnison's prairie dogs experience increased reproductive rates following population declines, a life history trait that likely mediates the effects of shooting and enables populations to recover. A population viability analysis confirmed that the probability of colony extirpation from recreation shooting alone is low (Seglund and Schnurr 2010, p. 168).

Recreational shooting is permitted rangewide, but it is unlikely that all Gunnison's prairie dog colonies experience the same levels of shooting. Recreational shooting of prairie dogs is more concentrated on colonies with reasonably easy access (Gordon *et al.* 2003, p. 12). Higher elevation or more remote colonies may never experience shooting pressures due to the difficulty of access. Shooting is likely concentrated near urban areas and agricultural fields (Gordon *et al.* 2003,

p. 12; Seglund *et al.* 2006, p. 33). However, urbanization and agriculture affect less than 3 percent of the Gunnison's prairie dog's range (see Factor A discussion).

Unlike Arizona, Utah, or New Mexico, Colorado classifies both *Cynomys gunnisoni gunnisoni* and *C. g. zuniensis* as small game. Therefore, Colorado is the only State within the range of the Gunnison's prairie dog that requires a species-specific hunting permit to shoot prairie dogs. The Gunnison's prairie dog is a nongame mammal in Arizona, Utah, and New Mexico, so shooting is lawful under the auspices of a general hunting license (Seglund *et al.* 2006, pp. 28, 30, 31; Underwood 2007, p. 11). Because permits are not required in other States, quantifying the number of prairie dogs killed by shooting is difficult. However, local residents generally shoot Gunnison's prairie dog, compared to the large numbers of nonresidents that travel to shoot black-tailed prairie dogs (Knowles 2002, p. 14; Seglund *et al.* 2006, p. 39; Seglund and Schnurr 2010, p. 165).

Harvest surveys for Colorado indicate that only 4.6 to 7.4 percent of hunters shot prairie dogs of any species between 2001 and 2005 (CDOW 2001–2005). In 2005, the Statewide harvest estimate for all prairie dog species in Colorado was 388,714 ± 154,520 and 328,936 ± 36,787 in 2004 (CDOW 2005, p. 1). Hunting surveys after 2005 do not record the numbers of prairie dogs taken by each hunter, but shooters may hit from 40 to 100 black-tailed prairie dogs per day (Seglund *et al.* 2006, pp. 39–40). In Arizona, hunting surveys estimate that between 30,000 to 94,000 *Cynomys gunnisoni zuniensis* are taken each year and that the number of prairie dogs killed declined by approximately 56 percent between 2000 and 2006 (Wagner *et al.* 2006, p. 336; Underwood 2007, pp. 11, 39). Using the minimum density estimate of 2 prairie dogs per ac (5 per ha) (Fitzgerald *et al.* 2011, p. 140) and the predicated range for the Gunnison's prairie dog (Seglund *et al.* 2006, p. 70), these harvest estimates represent less than 1 percent of the potential Gunnison's prairie dog population in Arizona and a maximum 4.5 percent of the potential population in Colorado. Therefore, these data indicate that shooting pressure is low on the Gunnison's prairie dog in Arizona and Colorado. There is no information to indicate that shooting pressures are greater in New Mexico or Utah. The Navajo Nation also requires a small game permit to hunt prairie dogs, but provided no data on numbers of animals taken.

Conservation Efforts To Reduce Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Shooting closures during the breeding season reduce the impacts of recreational shooting (discussed below under *Factor D*). A population viability analysis for the Gunnison's prairie dog confirmed that shooting closures from March 1 through June 14 each year increased population growth rates and reduced the risk of extinction (CDOW 2007, pp. 135–137). Without a seasonal shooting closure, small populations subjected to intense shooting experienced a decrease in growth rate and an increased risk of extinction (CDOW 2007, pp. 135–137). Colorado, Utah, and Arizona (outside Tribal lands) have implemented seasonal closures on prairie dog shooting. These closures reduced population declines caused by shooting. *Cynomys gunnisoni zuniensis* populations at the Aubrey Valley Complex increased after Arizona instituted its seasonal shooting closure (SSA Workshop 2013). In Arizona, New Mexico and Utah, the Navajo Nation requires a small game permit but currently implements no closures on shooting because the level of shooting is low and localized (Cole 2007, p. 4; Johnson *et al.* 2010, p. 3).

Summary of Factor B

The effects of recreational shooting may be high on specific, easily accessible, localized colonies. However, these effects do not result in rangewide population declines for either *Cynomys gunnisoni gunnisoni* or *C. g. zuniensis.* There are no other known threats due to commercial, scientific, or educational uses of the species.

Therefore, the best scientific and commercial information available indicates that overutilization for commercial, recreational, scientific, or educational purposes is not currently a threat to *Cynomys gunnisoni gunnisoni* or *C. g. zuniensis,* nor is it likely to become so in the future.

Factor C. Disease or Predation

Predation

Predation is a natural occurrence for Gunnison's prairie dogs. Numerous species, including coyotes, badgers, black-footed ferrets, and various raptor species, prey on the Gunnison's prairie dog. However, there is no information available to indicate that predation is a threat to the species. Stable or increasing populations within black-footed ferret release areas suggest that predation is not a threat to Gunnison's prairie dog populations where the black-footed ferret has been reintroduced (Van Pelt 2013, p. 5). Therefore, predation is not a threat to either subspecies of the Gunnison's prairie dog now nor is it likely to become so in the future.

Sylvatic Plague

Severe outbreaks of sylvatic plague, or plague, often kill more than 99 percent of the Gunnison's prairie dogs in a population and can extirpate entire populations within one season (Lechleitner *et al.* 1962, pp. 190–192; Lechleitner *et al.* 1968, p. 736; Rayor 1985, p. 194; Cully 1989, p. 49; Fitzgerald *et al.* 2011, p. 139). Plague is an exotic disease caused by an infection of the Old World bacterium *Yersinia pestis* foreign to the evolutionary history of North American species, including the Gunnison's prairie dog (Barnes 1982, p. 238; Barnes 1993, p. 29; Biggins and Kosoy 2001, p. 907). Bites from infected fleas, direct contact with infected animals, or inhalation of infected respiratory droplets transmit the bacterium *Y. pestis* to rodents (Gage *et al.* 1995, pp. 695–696). Once infected, the bacterium multiplies within the host's bloodstream, and when highly concentrated, the hosts may die of septic shock, systemic inflammation, multi-organ failure, or hemorrhaging (Eisen and Gage 2009, p. 2).

Prairie dogs are highly susceptible to plague, likely because of their dense populations, social nature, abundant flea vectors, and uniformly low resistance to the bacterium (Biggins and Kosoy 2001, p. 913). After arriving in North America in 1908, plague was first detected in Gunnison's prairie dogs in the 1930s (Eskey and Hass 1940, p. 6), and the bacterium is now firmly established in the western United States, including the entire range of the Gunnison's prairie dog (Cully 1989, p. 49; Centers for Disease Control 1998, p. 1; Antolin *et al.* 2002, pp. 105–106; Girard *et al.* 2004, p. 8408). Gunnison's prairie dogs are likely more susceptible to plague than some other prairie dog species due to their less territorial nature, more social behaviors, and denser populations (Torres 1973, p. 31; Ruffner 1980, p. 20; Hubbard and Schmitt 1983, p. 51; Cully 1989, p. 51; Hoogland 1999, p. 8; Cully and Williams 2001, p. 899; Turner 2001, p. iii; Antolin *et al.* 2002, p. 14; Knowles 2002, p. 13).

Plague maintains itself at low levels throughout the range of the Gunnison's prairie dog. The disease cycles through Gunnison's prairie dog populations like a wildfire, with periods of low and high intensities. It smolders relatively quietly at low intensities within a population until conditions such as temperature, moisture, or host susceptibility fuel a more severe outbreak. These outbreaks can dramatically reduce the abundance of Gunnison's prairie dogs within specific populations (Gage *et al.* 1995, p. 696; Gage and Kosoy 2005, p. 506; Hanson *et al.* 2007, p. 790). Although the outbreak may reduce or extirpate entire populations, the outbreak eventually falls back to less severe levels, returning to smolder in the background in a maintenance state (Gage *et al.* 1995, p. 696). During this smoldering maintenance period, the bacterium establishes a stable reservoir that may later erupt into an outbreak (Girard *et al.* 2004, p. 8413; Gage and Kosoy 2005, pp. 506–509). The plague bacterium may maintain itself in the soil, within fleas, or by slowly transmitting itself within the prairie dog community (Biggins *et al.* 2010, p. 17).

The factors that cause plague outbreaks are not well understood, but may involve the density of hosts (including other mammals), the density of fleas, and climatic conditions (Cully 1989, p. 49; Cully and Williams 2001, pp. 899–903; Enscore *et al.* 2002, p. 186; Lomolino *et al.* 2003, pp. 118–119; Stapp *et al.* 2004; p. 237; Gage and Kosoy 2005, p. 509; Eisen 2006, p. 15380; Stapp *et al.* 2009, p. 807; Salkeld *et al.* 2010, p. 14247). The number of fleas may increase during outbreaks (Tripp *et al.* 2009, p. 313). Successive plague outbreaks may reduce populations so that the loss of colonies exceeds the rate of recolonization (Knowles 2002, p. 13). Repeated plague outbreaks, and the subsequent recovery of the local population, result in a cycle of contraction and expansion within Gunnison's prairie dog colonies (Wagner and Drickamer 2002, p. 16; Underwood 2007, p. 14). Consequences of repeated plague outbreaks could potentially include isolation, decreases in genetic diversity, and range contraction (Wagner and Drickamer 2002, p. 17).

Plague outbreaks do not erupt within all populations throughout the range of the Gunnison's prairie dog at the same time. Instead, outbreaks are patchy, occurring discretely in space and time within individual, local populations (Antolin *et al.* 2002, p. 102). Plague outbreaks are not large pandemics sweeping across the landscape (Antolin *et al.* 2002, p. 102). This sporadic, patchy pattern of outbreak eruption is consistent with a model of resistant hosts occasionally transmitting plague to susceptible, less-resistant hosts (Antolin *et al.* 2002, p. 109). The patchy distribution of outbreaks offers a temporal and spatial break for survivors and colonizers to repopulate.

Plague is responsible for major declines and fluctuations in Gunnison's prairie dog populations throughout the subspecies' ranges over the last 80 years (Seglund *et al* 2006, p. 42). The literature documents plague's periodic outbreaks and the subsequent reduction, extirpation, or recovery of local Gunnison's prairie dog populations in all four States and on Tribal lands (Lechleitner *et al.* 1968, p. 734; Rayor 1985, p. 194; Cully 1989, p. 49; CDOW 2007, p. 4; Wagner and Drickamer 2002, p. 15; Wagner and Drickamer 2004, p. 14; Seglund *et al.* 2005, p. 52; Luce 2005, p. 4; Seglund *et al.* 2006, pp. 42–43; Lupis *et al.* 2007, p. 32; Underwood 2007, p. 18; Johnson *et al.* 2010, p. 3).

However, the Gunnison's prairie dog currently occupies many of the same habitats where plague has reduced or eliminated populations in the past. Some populations declined and remain low after plague outbreaks, while other populations declined and either partially or fully recovered. In specific cases, populations tripled annually following outbreaks (Cully 1997, p. 146), while others remain low or absent (Fitzgerald *et al.* 1993, p. 52). The Gunnison's prairie dog's 80-year history with plague is characterized by often-drastic population declines punctuated by gradual repopulation, and complete losses of populations in some areas, but overall persistence across the subspecies' ranges. Persistence is evidenced by the long-term continuance of Gunnison's prairie dog populations at sufficient levels to survive with minimal management assistance in a variety of locations across the subspecies' ranges. Stable populations, as evidenced by the stable occupancy trends, indicate that repopulation rates for *Cynomys gunnisoni gunnisoni* or *C. g. zuniensis* equal or exceed the rates of decline, likely a factor of an intact metapopulation structure. Although plague causes wide fluctuations in population numbers, the Gunnison's prairie dog has demonstrated the resiliency and redundancy to return to pre-outbreak numbers and remain viable in the future.

Life-history traits may contribute to the subspecies' resiliency and continued viability in light of plague. The Gunnison's prairie dog reproduces more rapidly following intense population declines (Hoogland 2001, p. 923), a strategy that allows populations to survive and expand rapidly, even when numbers are very small (Wagner and Drickamer 2002, p. 16; Seglund *et al.* 2006, pp. 8, 16). A population viability analysis confirmed this life-history trait: Under modeled demographic scenarios, even small Gunnison's prairie dog populations can have robust population growth rates (CDOW 2007, p. 128). The population viability analysis also identified that more frequent outbreaks increased the risk of extinction (CDOW 2007, p. 129). Hibernation slows transmission of plague, but may merely delay the onset of symptoms (Barnes 1993, p. 35).

Climate change may affect the frequency of plague. As discussed under Factor E, yearly precipitation will vary, but temperature will increase over the next 40 years. Increased rainfall, particularly in the spring, significantly increases plague outbreaks (Stapp *et al.* 2004, p. 237; Snäll *et al.* 2008, pp. 245; 2008, pp. 245–246). However, outbreaks are less frequent when temperatures are hotter and there are more hot days per year (Snapp *et al.* 2004, p. 238; Snäll *et al.* 2008, p. 245).

Annual rainfall totals will vary due to climate change (Stapp *et al.* 2004, pp. 504–505). As a result, plague outbreaks will vary with the precipitation. Warmer winters can increase the transmission of plague (Stapp *et al.* 2004, p. 236; Salkeld and Stapp 2008, p. 620), likely because hibernation is shorter (Rayor 1985, p. 195), more fleas survive the winter, and habitats are more productive (Stapp *et al.* 2004, pp. 237–238). However, winters will also vary due to climate change, with both wet and dry years (Karl *et al.* 2009, p. 505). Seasonal variation may result in pulses of winter or early spring plague outbreaks during wetter years that decrease in intensity over time as hotter summer temperatures reduce plague in the environment. Plague occurrences are likely to decrease in black-tailed prairie dogs due to the effects of climate change (Snäll *et al.* 2009, p. 505). As temperatures rise throughout the ranges of both Gunnison's prairie dog subspecies due to climate change, the frequency of plague outbreaks and the prevalence of the *Yersinia pestis* bacterium within Gunnison's prairie dog habitats will likely decrease. Climate change may have less of a moderating effect on plague if the Gunnison's prairie dog shifts its range in response to increasing temperatures.

Plague occurs throughout the ranges of *Cynomys gunnisoni gunnisoni* and *C. g. zuniensis.* However, we found no evidence that plague impacts one subspecies more than the other or is more frequent or more intense within any portion of either subspecies' range. Plague historically reduced or eliminated large populations of both subspecies, but occupancy trends for both subspecies indicate that populations are stable and not declining. Therefore, both subspecies have demonstrated resiliency to the disease.

In our previous 2008 finding, we determined that plague affected Gunnison's prairie dogs living in wetter, higher elevation, ''montane'' habitats more than those in drier, lower elevation, ''prairie'' habitats. We reached this conclusion largely because we reasoned that the abundance of fleas within a colony was the primary factor influencing plague in the Gunnison's prairie dog (February 5, 2008; 73 FR 6668) and that environments that are more humid generally support more fleas, which favors the transmission of plague (Stenseth *et al.* 2006, p. 13111). As a result, we reasoned that plague affected *Cynomys gunnisoni gunnisoni* more than *C. g. zuniensis* due to its moister, higher elevation habitats that supported more plague-transmitting fleas. Because we implicated plague as the only threat responsible for whole population declines and extirpations, we deduced that the disease affected *C. g. gunnisoni* more than *C. g. zuniensis,* resulting in its lower percent occupancy (February 5, 2008; 73 FR 6670, 6677). More frequent plague outbreaks, coupled with smaller, more isolated populations that we reasoned were unable to recolonize due to mountainous topography, led to our conclusion that plague was a greater risk to *C. g. gunnisoni* than to *C. g. zuniensis.*

New research has improved our understanding of how plague is transmitted and reveals that fleas are not the sole instigators behind plague outbreaks. Fleas obviously play an important role in the transmission and maintenance of plague, as evidenced by the success of insecticide dusting to prevent and reduce outbreaks (Webb *et al.* 2006, p. 6238; Tripp *et al.* 2009, pp. 314, 319). Although infected fleas may be important plague vectors at the start of an outbreak, a short-term, plague reservoir that persists longer than the short lifecycles of infected fleas or prairie dogs is required to produce and sustain an outbreak (Webb *et al.* 2006, p. 6236; Eisen and Gage 2009, p. 6). This short-term infectious reservoir may include: Prairie dogs or other rodents that are resistant to the disease; recently dead or decaying carcasses; cannibalism of infected animals; plague bacteria in the soil; or longer living, infected fleas that continue to bite prairie dogs (Webb *et al.* 2006, pp. 6236, 6239; Eisen and Gage 2009, p. 6; Stapp *et al.* 2009, p. 807; Salkeld *et al.* 2010, pp. 14247, 14249). In other words, a combination of vectors, not just the abundance of fleas, helps drive plague outbreaks, so the presence of more fleas in *C. g. gunnisoni*'s ''montane'' habitats does not necessarily make plague worse or more frequent. In the future, continued colony dusting with insecticide and drying by climate change may limit the role that fleas play during plague outbreaks in *C. g. gunnisoni* colonies.

The mountainous topography of *Cynomys gunnisoni gunnisoni*'s higher elevation habitats may isolate colonies more than the flat, lower elevation habitats of *C. g. zuniensis.* Mountainous terrain may minimize the zone of contact between populations (Knowles 2002, p. 3) and make recolonization more difficult. After a plague outbreak, smaller prairie dog colonies and greater inter-colony distances may further isolate colonies and reduce the probability of recolonization (Wagner and Drickamer 2002, p. 17; Cully *et al.* 2010, p. 13). However, *C. g. gunnisoni* colonies may also benefit from greater inter-colony distances, because isolation also isolates the colony from plague. Isolated prairie dog colonies have lower transmission rates of plague, which lessens the impact of an outbreak and ultimately enhances the persistence of the population (Cully *et al.* 2010, p. 7). Therefore, mountainous habitats and isolation do not necessarily render *C. g. gunnisoni* more susceptible to plague-related population declines than *C. g. zuniensis.* Furthermore, the new occupancy surveys indicate that *C. g. gunnisoni* populations are not declining, which suggests that mountainous terrain and isolation have not impeded recolonization.

To summarize, the best available information currently indicates that *Cynomys gunnisoni gunnisoni* is not more susceptible or less able to resist the effects of plague than *C. g. zuniensis.* Although moister habitats may support more fleas, plague outbreaks are driven by more than flea abundance. Isolated colonies experience reduced transmission rates, so isolation may protect *C. g. gunnisoni* populations from plague. Despite historic losses to plague, population monitoring shows evidence of recovery of *C. g. gunnisoni* and indicates that mountainous terrain has not impeded movements or recolonization. Therefore, we find that plague is not significantly impacting one subspecies of Gunnison's prairie dog more than the other. Plague is not a threat to either subspecies, or the species as a whole now, nor is it likely to become so in the future.

Tularemia, Monkeypox, and Other Diseases

Captive black-tailed prairie dogs kept as pets have infected humans with tularemia (*Francisella tularensis*) and monkeypox (*Orthopoxvirus* spp.) (Anderson *et al.* 2003, p. 1093; Avashia *et al.* 2004, p. 483; Seglund and Schnurr 2010, p. 116), rare diseases that could potentially infect the Gunnison's prairie dog. West Nile Virus has infected wild black-tailed prairie dogs in Colorado (Seglund *et al.* 2006b, p. 58). However, we have no information to indicate that these or other diseases currently infect or impact the Gunnison's prairie dog. Therefore, these diseases are not a threat to either subspecies of Gunnison's prairie dog now, nor are they likely to become so in the future.

Conservation Efforts To Reduce Disease or Predation

Dusting (applying) insecticide on Gunnison's prairie dog burrows effectively reduces fleas and increases prairie dog survival rates from plague (Biggins *et al.* 2010; Abbott *et al.* 2012, p. 244). Dusting reduces fleas on prairie dogs from 45 to 86 percent for 10 months after application (Biggins *et al.* 2010, p. 17; Abbott *et al.* 2012, p. 246). Rangewide, State wildlife agencies and private landowners dusted approximately 5,209 ac (2,108 ha) of occupied Gunnison's prairie dog colonies in 2011 (Van Pelt 2012, p. 8), and dusted 1,010 ac (409 ha) in 2012 (Van Pelt 2013, p. 10). In 2011, private landowners, CPW, and the BLM preemptively dusted 651 acres within 19 different *Cynomys gunnisoni gunnisoni* colonies in Colorado to prevent plague outbreaks; the dusting appeared to stabilize colony occupancy (Van Pelt 2012, p. 9). Dusting colonies with insecticide has effectively reduced population declines from plague and has likely contributed to the population stability. Pursuant to its Statewide conservation plan, CPW will continue to proactively manage plague by dusting colonies in Colorado on private, State, and Federal lands (Seglund and Schnurr 2010, p. 115; Seglund 2012, p. 1).

A new vaccine that effectively inoculates black-footed ferrets from plague may also benefit Gunnison's prairie dogs in the future. This vaccine increased the survival of released black-footed ferrets as effectively as dusting (Matchett *et al.* 2010, p. 27; Abbott *et al.* 2012, 246). In the laboratory, 94 percent of the vaccinated prairie dogs survived plague (Rocke *et al.* 2010, p. 53; Abbott *et al.* 2012, p. 247). State agencies completed safety trials of the vaccine in 2012, and distributed vaccine-laden bait to eight Gunnison's prairie dog sites in 2012 (Van Pelt 2013, p. 11) and to four sites in 2013 (Rocke 2013, p. 1). Success of the prairie dog vaccine would reduce mortality from plague and prevent a population decline (Abbott *et al.* 2012, p. 248). Although researchers are still developing and testing the plague vaccine for use in prairie dogs, promising early results suggest that this tool will be available in the future to address the threat of plague. Because of the uncertainty surrounding the efficacy and feasibility of delivering the vaccine at a large enough scale, we do not rely on the vaccine in making this finding.

Summary of Factor C

Plague occurs throughout the ranges of *Cynomys gunnisoni gunnisoni* and *C. g. zuniensis* and maintains itself in local populations. Plague reduced populations from historical levels, extirpated some local populations, and may have isolated or fragmented colonies. However, the Gunnison's prairie dog continues to occupy approximately 20 percent of its potential habitats rangewide, and occupancy trends are stable rangewide and within individual population areas (Seglund 2012, p. 11). This percentage of occupied habitats provides the Gunnison's prairie dog with sufficient population redundancy to rebound and repopulate following declines, as evidenced by stable trends. Therefore, plague has not eliminated Gunnison's prairie dogs from large portions of its range even after at least 80 years of exposure to the disease. Affected colonies have demonstrated partial or complete recovery after plague outbreaks and populations of both subspecies continue to persist at the landscape level and within individual population areas. Plague outbreaks are temporally and spatially localized, which may mediate effects to the subspecies. Climate change may reduce the frequency of plague outbreaks in the future. Plague does not impact one subspecies more than the other. Therefore, while plague is affecting *Cynomys gunnisoni gunnisoni* and *C. g. zuniensis,* it is not a threat that is causing or projected to cause the species to be at risk of extinction. Furthermore, managers and researchers have successfully implemented plague control mechanisms, such as insecticide dusting. Vaccines were successful in the laboratory, and if successful in the wild, should alleviate population fluctuations and declines due to plague in the future.

Therefore, the best scientific and commercial information available indicates that neither disease nor predation is currently a threat to *Cynomys gunnisoni gunnisoni* or *C. g. zuniensis,* nor is either likely to become so in the future. Continued plague monitoring and research will allow us to assess the level of impact this disease plays in the long-term conservation of the Gunnison's prairie dog.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

State Regulations and Private Land Management

Approximately 50 percent and 5 percent of *Cynomys gunnisoni gunnisoni*'s potential range occurs on private and State lands respectively (Table 1). Approximately 25 percent of *C. g. zuniensis'* potential range occurs on private lands and 10 percent on State lands (Table 1).

State laws and regulations may provide specific authority for the conservation of the Gunnison's prairie dog on State-owned lands. State laws and regulations may also provide broad authority to regulate and protect wildlife on all lands within the State. These regulations may provide the States with a mechanism for indirect conservation through the regulation of threats to the species (e.g., noxious weeds). In general, States have broad authority to regulate and protect wildlife within their borders.

Potential impacts to the species that State agencies or private entities can manage include recreational shooting, shooting to protect agricultural interests, and oil and gas development on non-Federal mineral estates. In addition, State wildlife agencies can contribute to species conservation by supporting research and monitoring efforts, including plague management.

The Western Association of Fish and Wildlife Agencies (WAFWA) coordinates management efforts of the Gunnison's prairie dog and other species among the western States. The WAFWA prepared a rangewide conservation assessment and conservation plan for the Gunnison's prairie dog (Seglund *et al.* 2006; Seglund *et al.* 2007). The conservation plan required that each State develop and implement an objective, repeatable estimation technique to monitor long-term Gunnison's prairie dog population trends. Under the plan, all four States agreed to conduct occupancy surveys modeling (Seglund 2012, p. 1). Although WAFWA's conservation documents provide expertise, recommendations, and coordination for the conservation of the Gunnison's prairie dog, they do not provide regulatory protection.

Private lands comprise a large portion, approximately 27 percent, of the predicted range of the species (*Cynomys gunnisoni*) and approximately 50 percent of the predicted range for C. g. *gunnisoni* and 25 percent for *C. g. zuniensis* (Seglund *et al.* 2006, p. 71; Table 1). Private landowners can control prairie dogs on their land as necessary in Colorado, New Mexico, Arizona, and Utah. However, trespass laws generally limit public access and hunting on private lands throughout the subspecies' ranges. We have no evidence that the control activities or the policies of individual private landowners are impacting the species.

Oil and gas development occurs across the gross range of the species, including on lands managed by the four States. We are not aware of any regulations or land use plans that address Gunnison's prairie dogs on State and private lands. However, based on available information, we do not consider oil and gas development a factor that significantly affects the subspecies (see Factor A discussion, above).

Arizona

Arizona considers the Gunnison's prairie dog a Species of Greatest Conservation Need in its Comprehensive Wildlife Conservation Strategy (AGF 2006, p. 136). Species of Greatest Conservation Need are a conservation priority in Arizona (AGF 2006, p. 13), but this designation provides no regulatory protection. Private lands in Arizona support approximately 22 percent of *Cynomys gunnisoni zuniensis'* potential range within the State (Table 1).

Regulations in Arizona address recreational shooting of Gunnison's prairie dogs. Arizona classifies all prairie dogs as nongame mammals and requires a hunting license to shoot them (Underwood 2007, p. 27). However, Arizona prohibits shooting Gunnison's prairie dogs on all Federal, State, and private lands between April 1 and June 15 to protect populations during the breeding season (Seglund *et al.* 2006, p. 28; Underwood 2007, p. 28).

Colorado

Colorado's Comprehensive Wildlife Conservation Strategy considers the Gunnison's prairie dog a Species of Greatest Conservation Need (CDOW 2006, p. 17); however this designation provides no regulatory protection. Colorado also completed a Conservation Strategy for the Gunnison's prairie dog to guide conservation efforts for the species at the State and local levels (CDOW 2010, p. 1). This document guides conservation strategies, management priorities, and guidance, but it does not provide regulatory protection.

Colorado classifies the Gunnison's prairie dog as a small game species, and hunters may take animals by rifle, handgun, shotgun, handheld bow, crossbow, pellet gun, slingshot, falconry, and toxicants (CDOW 2007, pp. 41–42). Hunting Gunnison's prairie dogs requires a small game license, with the exception of private landowners who may take Gunnison's prairie dogs causing damage on their lands without a permit. Shooting Gunnison's prairie dogs on public lands is prohibited by regulation in Colorado between March 1 and June 14 to protect breeding individuals and young (CDOW 2007, pp. 41–42). During the open season, no bag or possession limits exist; however, contestants in shooting events may take no more than five prairie dogs per event (CDOW 2007, pp. 41–42). Colorado's seasonal shooting closure does not apply on private or Tribal lands.

The Colorado Oil and Gas Commission requires that oil and gas companies consult with State wildlife officials from CPW regarding impacts of their proposed developments to wildlife (COGCC 2009, p. 1200–1). The consultation process promotes best management practices and allows Colorado to set reasonable conservation conditions in sensitive wildlife areas (COGCC 2009, pp. 1200.1–1200.5). However, State wildlife officials voluntarily choose whether to consider prairie dogs during the consultation process, and it is unclear how frequently this occurs.

New Mexico

New Mexico classifies the Gunnison's prairie dog as a Species of Greatest Conservation Need (NMDGF 2006, p. 55) and drafted a Gunnison's prairie dog Conservation Plan (NMDGF 2008). This plan provides guidance, but does not confer regulatory protections.

Gunnison's prairie dogs are not a game animal in New Mexico and may be taken year-round without a permit by residents. However, non-residents must obtain a New Mexico hunting license to shoot prairie dogs within the State (Seglund *et al.* 2005, pp. 31, 32). New Mexico prohibits recreational shooting of the Gunnison's prairie dog on State lands (Seglund *et al.* 2006, p. 30).

We are aware of one city regulation that addresses potential impacts to *Cynomys gunnisoni gunnisoni* from urbanization. The City of Santa Fe, New Mexico, prohibits intentional destruction or other harm to the Gunnison's prairie dog on any lands within Santa Fe at any time in relation to development (Santa Fe 2013). Without an exemption, Gunnison's prairie dogs must be relocated to a city-approved relocation site (Santa Fe 2013). Although this regulation reduces direct mortality associated with development, it does not address the loss of habitat from urbanization. However, we have not found the loss of habitat from urbanization to be a threat to the subspecies.

Utah

The Gunnison's prairie dog is a Species of Concern and a Sensitive Species in Utah (UDWR 2005, p. 5–4; Seglund *et al.* 2006, p. 31), but this designation does not confer any regulatory protections. Utah completed a conservation agreement and Conservation Strategy for the Gunnison's and white-tailed prairie dogs in 2007 (Lupis *et al.* 2007). The Conservation Strategy outlines conservation priorities, but does not provide regulatory protection.

In Utah, shooting of Gunnison's prairie dogs is prohibited on public lands from April 1 to June 15, but they may be taken on private lands year-round. Utah does not require a license to shoot Gunnison's prairie dogs, and there is no bag limit (Lupis *et al.* 2007, pp. 18–19).

Tribal Laws and Regulations

Tribes manage approximately 36 percent of the Gunnison's prairie dog's potential habitat (Table 1). Tribes manage the most (53 percent) of *Cynomys gunnisoni zuniensis* habitat in Arizona (Table 1). Tribes manage very little of *C. g. gunnisoni*'s potential range in Colorado and New Mexico (Table 1). However, we are aware of only a few Tribal laws and regulations that specifically address potential impacts to the Gunnison's prairie dog.

For example, the Navajo Nation (overlapped by Arizona, New Mexico, and Utah) and Reservation of the Hopi Tribe in Arizona contain approximately 235,567 ac (102,615 ha) of active *Cynomys gunnisoni zuniensis* colonies, but these Tribes have limited regulatory mechanisms specific to the Gunnison's prairie dog, other than those that address hunting (Johnson *et al.* 2010, pp. 3, 21). The Navajo Nation classifies *C. g. zuniensis* as small game and requires a hunting license for shooting, but there is no seasonal shooting closure (Cole 2007, p. 4; Johnson *et al.* 2010, p. 3). The Navajo Nation also allows lethal and nonlethal removal of *C. g. zuniensis* for agricultural, human health, and safety purposes (Cole 2007, pp. 4, 5). The Hualapai Tribe in Arizona classifies *C. g. zuniensis* as small game, and requires a permit to hunt with a bag limit of 15, but has no seasonal closure (Hualapai 2013, pp. 1, 4, 7).

In general, Tribal members can hunt freely on Tribal lands, but trespass laws generally make it difficult for non-Tribal members to hunt on Tribal lands without a permit. Therefore, Tribal hunting regulations may provide some protection to the Gunnison's prairie dog from impacts related to shooting. However, we determined that recreational shooting is not a threat to either subspecies.

Other than hunting regulations that may provide some protection from recreational shooting, we are not aware of any other Tribal laws or ordinances that specifically address the Gunnison's prairie dog, its habitat, or other potential impacts. Tribal ordinances that address issues such as agriculture, transportation, and zoning for various types of land uses could potentially influence the Gunnison's prairie dog or its habitat. For example, zoning that protects open space might retain suitable habitat, and zoning that allows a housing development might destroy or fragment habitat.

Although Tribes manage a large percentage of potential Gunnison's prairie dog habitats, we have no evidence that Tribal management practices have a significant impact on either subspecies.

Federal Laws and Regulations

Federal agencies are responsible for managing approximately 26 percent of the Gunnison's prairie dog potential range, or about 25 percent of *Cynomys gunnisoni zuniensis*'s and 45 percent of *C. g. gunnisoni*'s potential range (Table 1). The BLM is the primary Federal agency managing Gunnison's prairie dog's potential range (16 percent), followed by the USFS (9 percent), and the National Park Service (1 percent) (Table 1). The Service and the Department of Defense each manage less than 1 percent of the species' potential range (Table 1). Potential impacts to the subspecies that could be managed by Federal land management agencies include oil and gas development, grazing, poisoning, and recreational shooting.

Bureau of Land Management

The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*) governs most land uses on BLM lands and specifically recognizes that BLM lands should be managed for the benefit of fish and wildlife resources (section 102(a)(8)). Under the FLMPA, the BLM must consider the needs of wildlife, including general considerations of Gunnison's prairie dogs, when conducting activities in their habitat. Typically, the BLM considers impacts to the Gunnison's prairie dog when planning projects and may adopt conservation measures intended to avoid or minimize impacts. The BLM must also adhere to environmental planning requirements under the National Environmental Policy Act, or NEPA (73 FR 61292, October 15, 2008; 42 U.S.C. 4321 *et seq.*), a Federal law that requires Federal agencies to consider the effects of their actions on the environment, including wildlife, before implementing a project.

The BLM's resource management plans (RMPs) are the basis for all of its actions and authorizations involving BLM-administered lands and resources. The RMPs establish allowable resource uses, general management practices, program constraints, and other parameters of project design (43 CFR 1601.0–5(n)). The RMPs provide programmatic guidance for site-specific activity plans and may include conservation measures to protect wildlife.

Current approved or draft RMPs for BLM lands in Utah and New Mexico include specific conservation measures for *Cynomys gunnisoni zuniensis* in Arizona and *C. g. zuniensis* and *C. g. gunnisoni* in New Mexico. Conservation measures include precluding oil and gas development and other surface-disturbing activities within 600 feet (183 meters) of active colonies, limiting the construction of power lines within colonies, and restricting shooting during the breeding season (BLM 2008a, pp. 138–139; BLM 2008b, pp. 122–123; BLM 2012, p. 2–125; BLM 2013, pp. 19, 143). Draft RMPs do not confer any regulatory protection to either subspecies. Although RMPs in Colorado and Arizona do not include the Gunnison's prairie dog, they are outdated or currently under revision. However, the BLM in Colorado and Arizona recognize the Gunnison's prairie dog as a BLM sensitive species (BLM 2009, p. 1; BLM 2010, p. 2; BLM 2011, p. 2). The BLM evaluates the effects of their actions on sensitive species and initiates proactive conservation measures to reduce or eliminate threats in order to minimize the likelihood and need for listing sensitive species under the Act (BLM 2008c, p. 3). The BLM in Colorado has actively participated in plague vaccine trails and dusting (Van Pelt 2012, p. 9). The BLM in Utah and New Mexico does not recognize the Gunnison's prairie dog as a sensitive or special status species, but RMPs provide conservation guidance and restrictions on BLM lands in these States.

U.S. Forest Service

The USFS recognizes the Gunnison's prairie dog as a Sensitive Species in New Mexico and Colorado (USFS 2007, line 135). As a Sensitive Species, the USFS evaluates potential impacts to the species and recommends mitigating potential effects. Policy directs the USFS to analyze and document the potential impacts to sensitive species from proposed management activities in a biological evaluation. However, the sensitive species designation does not confer regulatory protection to either subspecies.

The National Forest Management Act (NFMA) (16 U.S.C. 1600 *et seq.*), as amended, guides the management of Federal activities on National Forest System lands. The NFMA specifies that all national forests and grasslands must have a land and resource management plan (LRMP) to guide and set standards for natural resource management activities. The NFMA requires the USFS to incorporate standards and guidelines into LRMPs. Provisions to manage plant and animal communities for diversity, based on the suitability and capability of a specific land area, are developed in order to meet overall multiple-use objectives. In Colorado, the San Juan National Forest's LRMP addresses the Gunnison's prairie dog, but provides only conservation recommendations (USFS 2013, p. T–15).

The USFS manages approximately 9 percent of *Cynomys gunnisoni gunnisoni's* predicted range and 10 percent of *C. g. zuniensis's* predicted range (Table 1). While a USFS sensitive species designation and following the recommendations contained in the 2005 RCP (GSRSC 2005, entire) can provide some conservation benefits, they are voluntary in nature. Therefore, the USFS has minimal regulatory authority to address either subspecies of Gunnison's prairie dog.

Other Federal Agencies

The National Park Service, the Department of Defense, and the Service each manage 1 percent or less of the Gunnison's prairie dog's overall range (Table 1). Therefore, their management strategies are unlikely to significantly impact the subspecies throughout their respective ranges.

The federally endangered black-footed ferret (*Mustela nigripes*) has been reintroduced into two Gunnison's prairie dog (*Cynomys gunnisoni zuniensis*) colonies in Arizona (Van Pelt 2013, p. 5). The Act's protections of the black-footed ferret may indirectly benefit *C. g. zuniensis* at these relocation sites. Black-footed ferrets have not been reintroduced into *C. g. gunnisoni* colonies.

To summarize, Federal agencies have very few regulations that specifically address potential impacts to the Gunnison's prairie dog. Surface use restrictions on BLM lands in Utah likely minimize the impacts of oil and gas development to *Cynomys gunnisoni zuniensis.* The lack of protective measures for the subspecies in the other States that specifically address oil and gas development may impact the species in the future. However, the available information does not indicate that oil and gas development will significantly impact either subspecies in the future. Federal regulations also control poisoning. Therefore, the available evidence does not indicate that the Federal regulations are inadequate to protect either subspecies.

Summary of Factor D

Regulatory mechanisms may reduce potential impacts associated with oil and gas development, urbanization, grazing, poisoning, and recreational shooting. However, none of these potential activities and their potential impacts rise to the level of a threat to either subspecies. Existing regulatory mechanisms adequately reduce impacts associated with shooting and poisoning. Seasonal shooting closures in Colorado, Utah, and Arizona reduced population declines due to shooting. Federal regulation and prohibition of pesticides on Federal lands reduced the historical threat of poisoning.

Although the available information does not indicate that current levels of management are inadequate to address potential impacts, the Gunnison's prairie dog will benefit from continued coordination between State, Federal, Tribal, and private landowners, and other partners, particularly to address future plague outbreaks and habitat fragmentation.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Poisoning

Poisoning of Gunnison's prairie dogs historically occurred throughout the range of both subspecies (Seglund *et al.* 2005, pp. 56–57). The U.S. Department of Agriculture's Bureau of Biological Survey and the Agricultural Appropriations Act of 1915 planned and authorized the elimination of prairie dogs across the western United States (Oakes 2000). From 1914 to 1964, 2,310,203 ac (934,906 ha) of Gunnison's prairie dog habitat were poisoned in Arizona; 23,178,959 ac (9,380,192 ha) of habitat were poisoned in Colorado; 20,501,301 ac (8,296,582 ha) of habitat were poisoned in New Mexico; and 2,715,930 ac (1,099,098 ha) of habitat were poisoned in Utah. Between 1921 and 1961, poisoning reduced the amount of occupied Gunnison's prairie dog habitat in Arizona by 92 percent (Oakes 2000; Underwood 2007, pp. 16, 22). Poisoning campaigns led to a reduction in occupied habitat, extirpation from local areas, fragmentation, and isolation of colonies. The poisoning campaigns targeted black-tailed prairie dogs due to their visibility on the landscape, but Gunnison's and white-tailed prairie dogs were also poisoned (Seglund and Schnurr 2010, p. 140). Poisoning in all States became less common after Federal regulations of pesticides were enacted in the 1970s (Seglund *et al.* 2006, p. 47).

Today, State and Federal agencies are rarely involved in Gunnison's prairie dog control efforts unless human health and safety are at risk (Seglund *et al.* 2005, p. 57; Seglund *et al.* 2006 p. 47). The BLM restricts poisoning of prairie dogs on its lands unless required for human health and safety or if resource damage meets specific requirements (Hoogland 2005, p. 228). Individual landowners may still control prairie dogs on their private property. Poisoning occurs on the Navajo Nation within at least one large agricultural area (Johnson *et al.* 2010, p. 3).

Poisons can effectively control prairie dog populations. Baited poisons can result in 75 to 85 percent mortality, and fumigants can reduce populations by 95 percent (Seglund and Schnurr 2010, p. 141). Although poisoning was historically widespread, there is no information to indicate that poisoning occurs at more than a localized scale today. The four States within the range of the Gunnison's prairie dog do not compile records of pesticide sales, so it is difficult to quantify the amounts of poisons sold to control prairie dogs. Rozol, a poison used to control rodents, is not authorized for use on Gunnison's prairie dogs (Andelt and Hopper 2012, p. 3), which restricts its use rangewide. There is no information to indicate that pesticide applicators violate this regulation or that Rozol's use on other species impacts either *Cynomys gunnisoni gunnisoni* or *C. g. zuniensis.*

Black-trailed prairie dogs recover quickly from poisoning due to an increase of their population growth rate (Seglund and Schnurr 2010, p. 140). Poisoned black-tailed prairie dog colonies that declined by 45 percent rebounded within 10 months, while eradicated colonies returned to pre-poisoning densities after 5 years (Apa *et al.* 1990, pp. 107, 110; Seglund and Schnurr 2010, p. 140). Gunnison's prairie dogs likely rebound similarly from poisoning.

Although poisoning historically impacted Gunnison's prairie dog populations and may continue to impact local populations, there is no evidence that it is a threat to either subspecies of the Gunnison's prairie dog now nor is it likely to become so in the future.

Road Mortality

Vehicles may crush prairie dogs as the animals attempt to cross roads. Road-related Gunnison's prairie dog mortality is likely concentrated near specific human population areas, such as cities and towns. Oil and gas development and urbanization require new roads, so road-related mortality may increase near these areas.

However, there is no information that specifically quantifies road mortality of Gunnison's prairie dogs. Most road mortality likely occurs locally, near urbanized areas; however, urbanization currently impacts less than 2 percent of the Gunnison's prairie dog's range (Seglund *et al.* 2005, p. 41). Stable population trends suggest that Gunnison's prairie dog populations are able to recover from losses due to road mortality. Therefore, road mortality is not a threat to either subspecies of the Gunnison's prairie dog now nor is it likely to become so in the future.

Drought and Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). The term ''climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007a, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007a, p. 78).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has been faster since the 1950s. Examples include warming of the global climate system, and substantial increases in precipitation in some regions of the world and decreases in other regions. (For these and other examples, see IPCC 2007a, p. 30; and Solomon *et al.* 2007, pp. 35–54, 82–85). Results of scientific analyses presented by the IPCC show that most of the observed increase in global average temperature since the mid-20th century cannot be explained by natural variability in climate, and is ''very likely'' (defined by the IPCC as 90 percent or higher probability) due to the observed increase in greenhouse gas (GHG) concentrations in the atmosphere as a result of human activities, particularly carbon dioxide emissions from use of fossil fuels (IPCC 2007a, pp. 5–6 and figures SPM.3 and SPM.4; Solomon *et al.* 2007, pp. 21–35). Further confirmation of the role of GHGs comes from analyses by Huber and Knutti (2011, p. 4), who concluded it is extremely likely that approximately 75 percent of global warming since 1950 has been caused by human activities.

Scientists use a variety of climate models, which include consideration of natural processes and variability, as well as various scenarios of potential levels and timing of GHG emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions (e.g., Meehl *et al.* 2007, entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529). All combinations of models and emissions scenarios yield very similar projections of increases in the most common measure of climate change, average global surface temperature (commonly known as global warming), until about 2030. Although projections of the magnitude and rate of warming differ after about 2030, the overall trajectory of all the projections is one of increased global warming through the end of this century, even for the projections based on scenarios that assume that GHG emissions will stabilize or decline. Thus, there is strong scientific support for projections that warming will continue through the 21st century, and that the magnitude and rate of change will be influenced substantially by the extent of GHG emissions (IPCC 2007a, pp. 44–45; Meehl *et al.* 2007, pp. 760–764 and 797–811; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529). (See IPCC 2007b, p. 8, for a summary of other global projections of climate-related changes, such as frequency of heat waves and changes in precipitation. Also see IPCC 2011 (entire) for a summary of observations and projections of extreme climate events.)

Various changes in climate may have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). Identifying likely effects often involves aspects of climate change vulnerability analysis. Vulnerability refers to the degree to which a species (or system) is susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the type, magnitude, and rate of climate change and variation to which a species is exposed, its sensitivity, and its adaptive capacity (IPCC 2007a, p. 89; see also Glick *et al.* 2011, pp. 19–22). There is no single method for conducting such analyses that applies to all situations (Glick *et al.* 2011, p. 3). We use our expert judgment and appropriate analytical approaches to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

As is the case with all stressors that we assess, even if we conclude that a species is currently affected or is likely to be affected in a negative way by one or more climate-related impacts, it does not necessarily follow that the species meets the definition of an ''endangered species'' or a ''threatened species'' under the Act. If a species is listed as endangered or threatened, knowledge regarding the vulnerability of the species to, and known or anticipated impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

Global climate projections are informative, and, in some cases, the only or the best scientific information available for us to use. However, projected changes in climate and related impacts can vary substantially across and within different regions of the world (e.g., IPCC 2007a, pp. 8–12). Therefore, we use ''downscaled'' projections when they are available and have been developed through appropriate scientific procedures, because such projections provide higher resolution information that is more relevant to spatial scales used for analyses of a given species (see Glick *et al.* 2011, pp. 58–61, for a discussion of downscaling).

We reviewed climate records and projections for western North America, to evaluate potential impacts of climate change on both subspecies of Gunnison's prairie dog. Climate models predict a trend of continued warming, with hotter summers, warmer winters, decreased snowpack, earlier spring melts, increased evaporation, more droughts, and reduced summer flows throughout the subspecies' ranges.

Increased magnitude and frequency of droughts may reduce the availability of grasses for both subspecies of Gunnison's prairie dogs. Extensive drought in New Mexico may be responsible for a slight contraction in the southern part of the range. However, we lack specific information to indicate that drought has a negative rangewide effect on either subspecies of Gunnison's prairie dog. Furthermore, the Gunnison's prairie dog is well adapted to its arid and unpredictable habitats. Both subspecies disperse, hibernate, or aestivate when food is scarce or temperatures are hot, adaptations that may allow the subspecies to cope under drought regimes.

Specific impacts to the Gunnison's prairie dog under predicted future climate change scenarios are relatively unclear. As climates warm and native prairies become hotter and drier, prairie dogs will likely shift their ranges but occupy the same amount of habitat. Hotter and drier conditions may also reduce the frequency and intensity of plague outbreaks by reducing the abundance of fleas (see Factor C discussion). Hot, dry conditions may also make recreational shooting less appealing. Furthermore, the Gunnison's prairie dog disperses, hibernates, and aestivates to cope with environmental variability, such as reduced forage and extreme temperatures, adaptations which may help the species adapt to a changing climate.

Although both subspecies of Gunnison's prairie dogs may shift their occupied ranges in response to the effects of global climate change, both subspecies are well adapted to environmental variability. Therefore, drought and climate change are not threats to either subspecies now nor are they likely to become so in the future.

Summary of Factor E

Historically, poisoning contributed to large declines in areas occupied by Gunnison's prairie dogs. However, the available information does not indicate that poisoning currently occurs beyond a localized scale or that poisoning will increase in the future. Drought may reduce the availability of forage, but populations should be able to shift to more favorable habitats. Warming and drying associated with climate change may increase the frequency and intensity of droughts, but may also reduce the intensity and frequency of plague outbreaks.

Therefore, the best scientific and commercial information available indicates that other natural or manmade factors affecting its continued existence are not a threat to *Cynomys gunnisoni gunnisoni* or *C. g. zuniensis* now or nor are they likely to become so in the future.

Cumulative Effects of Factors A Through E

All four States within the Gunnison's prairie dog's range are actively involved in its management and prepared their own conservation assessments and plans for the two subspecies of Gunnison's prairie dog (Seglund and Schnurr 2010; Underwood 2007; Lupis *et al.* 2007; NMGFD 2008). These plans provide comprehensive conservation strategies to guide conservation efforts at the State and local levels. Each plan intends to provide conservation and management strategies and recommendations to reduce impacts and maintain viable populations. Although the States' conservation agreements and strategies are not regulatory documents, they provide important direction to mitigate potential threats to the subspecies.

Agriculture, grazing, the introduction of invasive plants, urbanization, oil and gas development, shooting, plague, and poisoning may impact *Cynomys gunnisoni gunnisoni* or *C. g. zuniensis* in at least localized areas. Historically, each of these factors impacted the subspecies and likely acted cumulatively to reduce the abundance of Gunnison's prairie dogs from historical levels. However, agriculture, grazing, and poisoning declined over time and are not currently impacting the subspecies with the same intensity. Today, many of these threats may act synergistically to impact populations, but colonies persist in many of these areas and populations are stable rangewide. Urbanization and shooting will likely continue into the future, but they currently impact local populations, with potential impacts most likely concentrated near urban areas. Plague, invasive plants, and climate change will also likely continue into the future, but plague outbreaks occur locally, while climate change and conservation efforts may mediate the effects of plague. The two subspecies are adapted to dry, arid habitats, but may shift their ranges in response to invasive plants and the effects of climate change. Therefore, we do not believe cumulative factors are a threat to the continued existence of *C. g. gunnisoni* or *C. g. zuniensis* now, nor are they likely to become so in the future.

Finding

As required by the Act, we considered the five factors to assess whether *Cynomys gunnisoni gunnisoni* or *C. g. zuniensis,* the two subspecies of the Gunnison's prairie dog, or both meets the definition of an endangered or threatened species throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the two subspecies. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with recognized Gunnison's prairie dog experts and other Federal, State, Tribal, and local agencies.

We identified and evaluated the risks of the present or threatened destruction, modification, or curtailment of the habitat or range of the two subspecies of Gunnison's prairie dog: (1) Agricultural land conversion; (2) grazing; (3) invasive plant species; (4) urbanization; and (5) oil and gas exploration and development. While these factors impact the subspecies, they impact only small portions of each subspecies' range or occur locally.

We identified and evaluated the risks from overutilization for commercial, recreational, scientific, or education purposes. Although recreational shooting kills individuals and may reduce populations in easily accessible colonies, the available evidence indicates that the magnitude or intensity of shooting is not having rangewide impacts to either subspecies.

Plague impacts populations throughout both of the subspecies' ranges. However, colonies persist and populations are stable in their post-plague environments, which demonstrates a rangewide resiliency to the disease. Life-history characteristics, such as increased reproductive rates within small populations and a metapopulation structure, allow Gunnison's prairie dog populations to rebound and persist following plague outbreaks. Additionally, plague affects only portions of the range at one time. Climate change and management actions, such as dusting and vaccines, may decrease the threat of plague. Other diseases, such as tularemia, monkey-pox, or West Nile virus, are not threats to either *Cynomys gunnisoni gunnisoni* or *C. g. zuniensis.* Additionally, although numerous species prey on Gunnison's prairie dogs, there is no evidence that predation adversely impacts either subspecies.

Based on our analysis of the existing regulatory mechanisms, we determined that the States are actively involved in managing the subspecies through conservation agreements and strategies. Although these agreements are not regulatory, they provide an important mechanism for conservation, monitoring, and research. Existing regulatory mechanisms on State, Federal, and Tribal lands are limited. Seasonal shooting closures provide some protection for the Gunnison's prairie dog in Arizona and Colorado. Bag limits and permit requirements may provide protection from shooting on the Navajo Nation and the Hualapai Tribe.

We also assessed the potential risks to *Cynomys gunnisoni gunnisoni* and *C. g. zuniensis* from poisoning, roads, and the effects of climate change. The available evidence indicates that poisoning or road mortality do not occur at more than a local scale. *C. g. gunnisoni* and *C. g. zuniensis* may shift their ranges in response to climate change, but climate change may reduce the frequency and intensity of plague outbreaks.

In the past, many of these factors may have synergistically impacted both subspecies of the Gunnison's prairie dog. Today, many of these factors occur locally or are less intense or frequent than they were historically.

Therefore, based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the threats are not of sufficient imminence, intensity, or magnitude to indicate that *Cynomys gunnisoni gunnisoni* or *C. g. zuniensis* is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout all of their respective ranges. To summarize, although a variety of factors impact both subspecies of Gunnison's prairie dog, such as the loss or modification of habitats from urbanization, oil and gas development, grazing, agriculture, invasive plants, or other factors, such as recreational shooting, poisoning, and plague, most of these factors occur locally and do not impact rangewide populations of either subspecies. Plague is the primary impact to both subspecies and plague outbreaks can reduce individual populations by more than 99 percent. However, our review determined that colonies and populations of both *C. g. gunnisoni* and *C. g. zuniensis* recover and persist following plague outbreaks, due largely to the spatial and temporal separation of plague outbreaks and life history characteristics that allow populations to recover following dramatic declines. Additionally, ongoing conservation efforts, such as dusting burrows with insecticide, will likely continue to mediate the effects of plague outbreaks in the future and climate change may reduce the frequency and intensity of plague outbreaks. Therefore, we do not consider plague or any other impacts to be a threat such that either subspecies of Gunnison's prairie dog is warranted for listing as an endangered or threatened species under the Act.

Under the Act, a ''species'' is defined as including any subspecies of fish or wildlife or plants, and any distinct population segment (DPS) of any species of vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532(16)). For this finding, we evaluated potential threats to the two recognized subspecies of Gunnison's prairie dog, whose combined ranges comprise the entire species' range. By evaluating both subspecies (*Cynomys gunnisoni gunnisoni* and *C. g. zuniensis*), which comprise the entire species, we effectively assessed the status of the entire species (*C. gunnisoni*). Because we found that neither subspecies is threatened or endangered throughout all of its respective range, the Gunnison's prairie dog at the species level is similarly not in danger of extinction or likely to become endangered within the foreseeable future throughout the range of the species.

Distinct Population Segment Analysis

After assessing whether *Cynomys gunnisoni gunnisoni* or *C. g. zuniensis* is endangered or threatened throughout its range, we evaluated whether any distinct vertebrate population segment (DPS) of either subspecies exists and is threatened or endangered. We consider three elements when evaluating a potential distinct vertebrate population segment under our Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act, or DPS Policy (February 7, 1996; 61 FR 4722). The three elements include:

(1) The discreetness of a population in relation to the remainder of the taxon to which it belongs;

(2) The significance of the population segment to the taxon to which it belongs; and

(3) The population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification.

Under our DPS policy, we consider a population segment of a vertebrate taxon discrete if it satisfies either of the following conditions:

(1) The segment is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or

(2) The segment is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory

mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

We did not identify any population segment of *Cynomys gunnisoni gunnisoni* or *C. g. zuniensis* so markedly separated from other Gunnison's prairie dog populations by physical, physiological, ecological, or behavioral factors such that it may be considered discrete. The Gunnison's prairie dog is a colonial species that inhabits large landscapes, potentially occupying 23,459,500 ac (9,493,733 ha) across four States (Seglund *et al.* 2006, p. 79). Available colony mapping indicates that populations across these landscapes are discontinuous, or patchy, and occupied habitats dynamically shift as individuals disperse, recolonize, or establish new colonies. However, this discontinuous distribution is natural for the Gunnison's prairie dog, as dispersers move and interact between populations within the larger ecological framework of the metapopulation. The metapopulation links the individual populations and promotes genetic exchange. The best available population monitoring information indicates that the metapopulation structure is intact and that any discontinuity between occupied habitats is not impeding dispersers or markedly separating any population segment. Additionally, Gunnison's prairie dogs are very social and live in complex family groups, so populations are not markedly separated by behavioral factors and the available information does not indicate that physiological differences occur between populations. Therefore, ecological, behavioral, or physiological factors are not markedly separating a population segment of either *C. g. gunnisoni* or *C. g. zuniensis* from other populations.

Mountainous topography may isolate Gunnison's prairie dog populations, particularly in the higher elevation habitats of *Cynomys gunnisoni gunnisoni.* However, the available information does not indicate that terrain markedly separates one population segment from any other population. The best available population monitoring data indicate that the metapopulation structure operates despite physical boundaries. For instance, mountainous terrain delineates the approximate boundary between *C. g. gunnisoni* and *C. g. zuniensis* in northern New Mexico and southcentral Colorado, but the two subspecies have shared genetic material across the boundary. Quantitative measures indicate that there is no genetic discontinuity between the two subspecies. Although steeper mountainous terrain separates *C. g. gunnisoni* populations in central Colorado from those in New Mexico, the available information does not indicate that populations in Colorado, or any segment of a population, are genetically or morphologically different from any other population. Dispersal of prairie dogs along valley bottoms between the steep terrain likely maintains the metapopulation link between *C. g. gunnisoni* populations. Therefore, the available information does not indicate that any physical factors have resulted in genetically or morphologically discreet population segments of *C. g. gunnisoni* or *C. g. zuniensis* that are markedly separated from any other populations.

To summarize, based on the best available information, we determine that no population segment within the range of the Gunnison's prairie dog or either of the two subspecies of Gunnison's prairie dog meets our DPS Policy's discreteness criteria. Because we did not identify any population segment as discrete, we do not evaluate significance under our DPS policy. Therefore, no population segment of Gunnison's prairie dog, *C. gunnisoni gunnisoni,* or *C. g. zuniensis* qualifies as a DPS and is therefore not a listable entity under the Act.

Significant Portion of the Range

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The definition of ''species'' is also relevant to this discussion. The Act defines the term ''species'' to include ''any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.'' The phrase ''significant portion of its range'' (SPR) is not defined by the statute, and we have never addressed in our regulations: (1) The consequences of a determination that a species is either endangered or likely to become so throughout a significant portion of its range, but not throughout all of its range; or (2) what qualifies a portion of a range as ''significant.''

Two recent district court decisions have addressed whether the SPR language allows the Service to list or protect less than all members of a defined ''species'': *Defenders of Wildlife* v. *Salazar,* 729 F. Supp. 2d 1207 (D. Mont. 2010), vacated as moot, 2012 U.S. App. Lexis 26769 (9th Circ. Nov. 7, 2012), concerning the Service's delisting of the Northern Rocky Mountain gray wolf (74 FR 15123, April 2, 2009); and *WildEarth Guardians* v. *Salazar,* 2010 U.S. Dist. LEXIS 105253 (D. Ariz. September 30, 2010), concerning the Service's 2008 finding on a petition to list the Gunnison's prairie dog (73 FR 6660, February 5, 2008) (see *Previous Federal Actions*). The Service had asserted in both of these determinations that it had authority, in effect, to protect only some members of a ''species,'' as defined by the Act (i.e., species, subspecies, or DPS), under the Act. Both courts ruled that the determinations were arbitrary and capricious on the grounds that this approach violated the plain and unambiguous language of the Act. The courts concluded that reading the SPR language to allow protecting only a portion of a species' range is inconsistent with the Act's definition of ''species.'' The courts concluded that once a determination is made that a species (i.e., species, subspecies, or DPS) meets the definition of ''endangered species'' or ''threatened species,'' it must be placed on the list in its entirety and the Act's protections applied consistently to all members of that species (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act).

Consistent with the district court decisions discussed above, and for the purposes of this finding, we now interpret the phrase ''significant portion of its range'' in the Act's definitions of ''endangered species'' and ''threatened species'' to provide an independent basis for listing; thus there are two situations (or factual bases) under which a species would qualify for listing: A species may be endangered or threatened throughout all of its range; or a species may be endangered or threatened in only a significant portion of its range. If a species is in danger of extinction throughout a significant portion of its range, the species is an ''endangered species.'' The same analysis applies to ''threatened species.'' Based on this interpretation and supported by existing case law, the consequence of finding that a species is endangered or threatened in only a significant portion of its range is that the entire species shall be listed as endangered or threatened, respectively, and the Act's protections shall be applied across the species' entire range.

We conclude, for the purpose of this finding, that interpreting the significant portion of its range phrase as providing an independent basis for listing is the best interpretation of the Act because it is consistent with the purposes and the plain meaning of the key definitions of the Act; it does not conflict with established past agency practice, as no consistent, long-term agency practice has been established; and it is consistent with the judicial opinions that have most closely examined this issue. Having concluded that the phrase ''significant portion of its range'' provides an independent basis for listing and protecting the entire species, we next turn to the meaning of ''significant'' to determine the threshold for when such an independent basis for listing exists.

Although there are potentially many ways to determine whether a portion of a species' range is ''significant,'' we conclude for the purposes of this finding that the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for ''significant'' in terms of an increase in the risk of extinction for the species. We conclude that a biologically based definition of ''significant'' best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species' conservation. Thus, for the purposes of this finding, and as explained further below, a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction.

We evaluate biological significance based on the principles of conservation biology using the concepts of redundancy, resiliency, and representation. *Resiliency* describes the characteristics of a species and its habitat that allow it to recover from periodic disturbance. *Redundancy* (having multiple populations distributed across the landscape) may be needed to provide a margin of safety for the species to withstand catastrophic events. *Representation* (the range of variation found in a species) ensures that the species' adaptive capabilities are conserved. Redundancy, resiliency, and representation are not independent of each other, and some characteristic of a species or area may contribute to all three. For example, distribution across a wide variety of habitat types is an indicator of representation, but it may also indicate a broad geographic distribution contributing to redundancy (decreasing the chance that any one event affects the entire species), and the likelihood that some habitat types are less susceptible to certain threats, contributing to resiliency (the ability of the species to recover from disturbance). None of these concepts is intended to be mutually exclusive, and a portion of a species' range may be determined to be ''significant'' due to its contributions under any one or more of these concepts.

For the purposes of this finding, we determine if a portion's biological contribution is so important that the portion qualifies as ''significant'' by asking whether *without that portion,* the representation, redundancy, or resiliency of the species would be so impaired that the species would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction (i.e., would be ''endangered''). Conversely, we would not consider the portion of the range at issue to be ''significant'' if there is sufficient resiliency, redundancy, and representation elsewhere in the species' range that the species would not be in danger of extinction throughout its range if the population in that portion of the range in question became extirpated.

We recognize that this definition of ''significant'' (a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction) establishes a threshold that is relatively high. On the one hand, given that the consequences of finding a species to be endangered or threatened in a significant portion of its range would be listing the species throughout its entire range, it is important to use a threshold for ''significant'' that is robust. It would not be meaningful or appropriate to establish a very low threshold whereby a portion of the range can be considered ''significant'' even if only a negligible increase in extinction risk would result from its loss. Because nearly any portion of a species' range can be said to contribute some increment to a species' viability, use of such a low threshold would require us to impose restrictions and expend conservation resources disproportionately to conservation benefit: Listing would be rangewide, even if only a portion of the range of minor conservation importance to the species is imperiled. On the other hand, it would be inappropriate to establish a threshold for ''significant'' that is too high. This would be the case if the standard were, for example, that a portion of the range can be considered ''significant'' only if threats in that portion result in the entire species' being currently endangered or threatened. Such a high bar would not give the significant portion of its range phrase independent meaning, as the Ninth Circuit held in *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136 (9th Cir. 2001).

The definition of ''significant'' used in this finding carefully balances these concerns. By setting a relatively high threshold, we minimize the degree to which restrictions will be imposed or resources expended that do not contribute substantially to species conservation. However, we have not set the threshold so high that the phrase ''in a significant portion of its range'' loses independent meaning. Specifically, we have not set the threshold as high as it was under the interpretation presented by the Service in the *Defenders of Wildlife* v. *Norton* litigation. Under that interpretation, the portion of the range would have to be so important that current imperilment there would mean that the species would be *currently* imperiled everywhere. Under the definition of ''significant'' used in this finding, the portion of the range need not rise to such an exceptionally high level of biological significance. (We recognize that if the species is imperiled in a portion that rises to that level of biological significance, then we should conclude that the species is in fact imperiled throughout all of its range, and that we would not need to rely on the significant portion of its range language for such a listing.) Rather, under this interpretation we ask whether the species would be endangered everywhere without that portion, *i.e.,* if that portion were completely extirpated. In other words, the portion of the range need not be so important that even the species being in danger of extinction in that portion would be sufficient to cause the species in the remainder of the range to be endangered; rather, the *complete extirpation* (in a hypothetical future) of the species in that portion would be required to cause the species in the remainder of the range to be endangered.

The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that have no reasonable potential to be significant or to analyzing portions of the range in which there is no reasonable potential for the species to be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be ''significant,'' *and* (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.'' In practice, a key part of the determination that a species is in danger of extinction in a significant portion of its range is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats to the species occurs only in portions of the species' range that clearly would not meet the biologically based definition of ''significant,'' such portions will not warrant further consideration.

Our review determined that there are not any concentrations of threats in any part of the ranges occupied by *Cynomys gunnisoni gunnisoni* or *C. g. zuniensis.* Plague is the most substantial factor currently affecting both subspecies of the Gunnison's prairie dog. The entire ranges of both subspecies are operating in a post-plague environment. There is variation between colonies and populations in their ability to maintain abundance following outbreaks. However, variation occurs throughout the range of both subspecies and is not concentrated in any one geographic location. Although *C. g. gunnisoni* has a lower occupancy than *C. g. zuniensis,* we have no evidence that plague outbreaks today are more frequent or more intense in any one part of the range. Rather, populations for both subspecies have remained stable throughout their respective ranges and within individual population areas. Therefore, at this time, there is no evidence to suggest that plague affects portions of either *C. g. gunnisoni'*s or *C. g. zuniensis'*s range differently now or will within the foreseeable future. Because there are no concentrations of threats in any portion of the range of *C. g. gunnisoni* or *C. g. zuniensis,* we did not evaluate whether any portions meet the definition of ''significant.''

Conclusion

Our review of the best available scientific and commercial information indicates that neither *Cynomys gunnisoni gunnisoni* nor *C. g. zuniensis* is in danger of extinction (endangered), nor likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range. Therefore, we find that listing *C. g. gunnisoni* or *C. g. zuniensis* as endangered or threatened subspecies under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, *C. g. gunnisoni* or *C. g. zuniensis* to our Colorado Field Office (see **ADDRESSES**) whenever it becomes available. New information will help us monitor these two subspecies and encourage their conservation. If an emergency situation develops for either of these subspecies, we will act to provide immediate protection.

References Cited

A complete list of all references cited in this document is available on the Internet at *http://www.regulations.gov* and upon request from the Colorado Field Office (see **ADDRESSES**).

Authors

The primary authors of this notice are staff located at the Colorado Field Office.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 1, 2013,

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–27196 Filed 11–13–13; 8:45 am]

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